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Weighted scales: American newspaper coverage of the trial of the major war criminals at Nuremberg

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WEIGHTED SCALES: AMERICAN NEWSPAPER COVERAGE OF THE TRIAL OF
THE MAJOR WAR CRIMINALS AT NUREMBERG

being

A Thesis Presented to the Graduate Faculty
of the Fort Hays State University in
Partial Fulfillment of the Requirements for
the Degree of Master of Arts

by

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ABSTRACT

The Trial of the Major War Criminals at Nuremberg, the personalities associated with the trial, the verdicts rendered, and criticisms directed toward both those verdicts and the tribunal itself have generated a multitude of historical works. However, few historians have explored the American print media's coverage of the trial and even fewer have studied how a newspaper's disposition towards the trial reflected that publication's political ideology and influenced the newspaper's coverage of the trial itself. For this reason, it is the objective of this thesis to examine this neglected area, thus contributing to the scholarship of the first Nuremberg Trial.

The newspapers chosen for assessment reflect varying degrees of ideological affiliation and are somewhat diverse geographically. Of the five publications selected, two, *The Wall Street Journal* and *Chicago Daily Tribune*, were recognized to be solid supporters of the political right. Likewise, during the period examined, the other publications, *The New York Times*, *The Washington Post*, and *Los Angeles Times*, were considered politically moderate to liberal in their ideology. This study examines editorials, columns (both unique to the specific publication and those syndicated nationally), and letters to the editor dedicated to the trial, in conjunction with the actual reports filed by the newspaper's correspondents and wire services. This thesis also examines the regularity of each newspaper's coverage of the trial and its selection of the information published within its pages, including a comparison with the other publications.

After an intense examination of the materials listed above, this study finds that there exists a strong correlation between the political ideology associated with the individual newspapers and their disposition towards the trial, a bias that often manifested itself in

the newspaper's coverage of the proceedings. As one might expect, those publications considered traditionally moderate to liberal endorsed the trial and viewed it as a positive step towards strengthening international law and establishing global security. Those newspapers often identified as being politically conservative questioned the trial's legitimacy, believing that its mechanisms were anathematic to western legal principles and infringed on national sovereignty.

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INTRODUCTION

Prior to the Second World War, the concept of “war crimes” seldom registered on the global consciousness. In the decades that followed the Nuremberg Trials, the idea that the actions of a warring nation could be subject to criminal prosecution would resonate worldwide. Even before the liberation of the Nazi concentration camps and the recognition of the scope of Adolf Hitler’s “Final Solution,” the Allies had begun planning the joint Anglo-American and Soviet prosecution of Hitler and his acolytes at the Moscow Conference of 1943. The signing of the Moscow Declaration signaled the first tangible step towards the creation of the International Military Tribunal (IMT) that would sit in judgment over the major war criminals. Over the next twenty-one months, the Allies constructed a method of trying the accused that would be both legal and satisfactory to the global community. On 20 November 1945, with the eyes of the world upon them, the IMT began its grim duty with the stated belief that the Trial of the Major War Criminals represented the antithesis of the Nazi regime, justice and, perhaps, mercy for those who offered none. However, questions regarding the legality of the IMT, the charges presented by the prosecution, the selection of defendants, as well as some of the final verdicts, divided the print media of the trial’s principal architect, the United States. Although most major metropolitan American newspapers provided extensive coverage of the proceedings and, in doing so, addressed the criticisms levied against it, of the five publications chosen for this thesis the tone of that coverage remained consistent throughout the trial and reflected the political ideology of each publication.

The five publications chosen for assessment represent varying ideological perspectives as well as being diverse geographically. Three of the five publications selected, the *Los Angeles Times* (*LA Times*), *The Washington Post* (*The Post*), and *The*

New York Times (*The Times*) were moderate to liberal in their political ideology, while the remaining two, *The Wall Street Journal* (*The Journal*) and *Chicago Daily Tribune* (the *Tribune*), were solid supporters of the political right.¹ To provide as complete a representation of each newspaper's stance on the trial as possible, the author has chosen to include in his analysis editorials, syndicated columns, and letters to the editor dedicated to the IMT, in conjunction with the actual reports filed by the newspaper's respective correspondents and wire services. This thesis also looks at the frequency of each newspaper's coverage and its selection of the information published within its pages, including a comparison with the other publications. The period examined in the selected newspapers focuses primarily on the events occurring between the announcement of the IMT's charter in London on 8 August 1945 and the month following the executions, which occurred on 16 October 1946. It is in this timeframe that the author devotes the bulk of his study and it is in these sixteen months that the author will compare the coverage between the five newspapers selected.

However, this analysis begins by presenting an overview of the events that led to the creation of the IMT. It is by investigating the tribunal's evolution that one may understand the pressures on the parties involved in creating the tribunal and identify the criticisms the members of the IMT knowingly dealt with and that both the professional historian and the novice point to when examining a noble, if flawed, attempt at holding the surviving representatives of the Third *Reich* accountable. In this chapter, as with those that follow it, the term "war crimes" program, policy, or proposal will refer to the development of what eventually became the International Military Tribunal. The author will designate "war crimes" as a specific charge when it applies. Chapter two examines

¹ Author's Note: The *Chicago Daily Tribune* (later shortened to the *Chicago Tribune*) designated its Sunday edition as the *Chicago Sunday Tribune*.

the choice of the defendants and the prosecution's rationale for their selection, and presents a brief biography of each of the accused. Interwoven throughout the first two chapters are policy issues and incidents that address the aforementioned criticisms. Chapter three represents the bulk of this thesis and examines newspaper coverage following the announcement of the IMT's creation in August 1945 and through the prosecution's final summation the following July. Chapter three will again revisit the criticisms identified in the first two chapters and examine each individual newspaper's treatment of the trial based on the criteria discussed above. Chapter four examines the press's coverage of the verdicts, executions of the condemned, and the trial's aftermath following the pattern set forth in chapter three. While indicative of both the coverage of the five publications and their attitudes toward the trial, the articles and commentary discussed in the final two chapters are by no means exhaustive, as to make them so would be superfluous. The conclusion will compare the five newspapers' overall treatment of the Trial of the Major War Criminals,² summarizing the trends and deviations in their reporting and providing a breakdown of each publication's total coverage.

The Third *Reich* and its denunciation at Nuremberg have spawned countless accounts in the past sixty years. Three sources examined in preparation for this thesis come from former Fulbright Scholar Dr. Bradley F. Smith: *The Road to Nuremberg*, *Reaching Judgment at Nuremberg*, and *The American Road to Nuremberg*. In *The Road to Nuremberg*, Smith examines the policy debates within Franklin Roosevelt's cabinet that culminated in the development of the Bernays Plan and the formulation of the IMT. Smith's *Reaching Judgment at Nuremberg*, published four years prior to *The Road to*

² Author's Note: The author uses this term throughout this study to differentiate the first Nuremberg Trial from those that followed it. The designation and capitalization used is consistent with that found in primary and secondary sources.

Nuremberg, provides an overview of the Trial of the Major War Criminals itself. *The American Road to Nuremberg* contains declassified British and American documents used by Smith in constructing his earlier works and serves as an appendix to both.

Unlike Smith, Dr. Sheldon Glueck, a professor of criminal law and criminology at Harvard University, addresses primarily the legal foundation of the IMT itself. Produced while the Trial of the Major War Criminals was in process, *The Nuremberg Trial and Aggressive War* also examines the criminality of waging an aggressive war and that argument's foundation in the Kellogg-Briand Pact. *Perspectives on the Nuremberg Trial*, a collection of essays addressing many of the political, legal, and moral questions raised by the proceedings, will provide some of the criteria used when identifying criticisms of the IMT. This collection includes contributions from members of the tribunal and the American prosecution team, including Justice Robert Jackson and Colonel Telford Taylor. Similarly, Taylor's *The Anatomy of the Nuremberg Trials* contributes to the historiography by providing a firsthand account of Nuremberg from the prosecution's vantage point and addressing its critics.

Like Taylor's memoirs, the late Airey Neaves's *On Trial at Nuremberg* provides a personal account of the proceedings as well as Neaves's own interactions with the defendants. The author recounts the difficulties the defendants' German legal counsel encountered in adapting to the unfamiliar trial procedures that stemmed from Anglo-American legal customs. Finally, William J. Bosch's *Judgment on Nuremberg: American Attitudes toward the Major German War-Crime Trials* provides excellent insights into American opinions on the legality of the trials themselves and contains a chapter dealing specifically with American media coverage.

However, with the exception of the Bosch chapter dealing with media coverage, little scholarship has focused on the American press's coverage of the Trial of the Major War Criminals by the International Military Tribunal at Nuremberg. In the past decade, several MA theses in the United States have addressed aspects of media coverage. Ohio State University graduate student Brian K. Feltman's MA thesis, "Window to Nuremberg: The American Press and the International Military Tribunal, 1945-1946," addresses the role American newspapers played in legitimizing the IMT, but does not concentrate on its criticisms. McMillan Houston Johnson's MA thesis, "Hitlerian Jurisprudence: American Periodical Media Responses to the Nuremberg War Crimes Trial, 1945-1948," adheres to a methodology helpful to this study, though Johnson's thesis focuses on periodicals rather than daily newspapers. Matthew J. Hawkins' MA thesis, "Representing evil: British and American media depictions of the Nazi defendants at the Nuremberg War Crimes Trial, 1945-6," compares and contrasts British and American media coverage of the Trial of the Major War Criminals. However, like Johnson, Hawkins utilizes only periodicals (with the exception of *The Times* of London and *New York Times*) as his source material. This thesis fits into the historiography of the IMT/Nuremberg Trials through its examination of the American press's coverage of the Trial of the Major War Criminals, its assessment of the selected newspapers' coverage of identified criticisms related to the proceedings, and its comparison of the newspapers' coverage *in toto*. As such, it is unique in both its scope and focus.

CHAPTER ONE

NAVIGATING BUREACRACIES AND RECONCILING DISPARATE LEGAL TRADITIONS: THE ALLIES' CONSTRUCTION OF A TRIAL SYSTEM

“I believe it would make some of these villains reluctant to be mixed up in butcheries now.”¹ – Prime Minister Winston Churchill, 12 October 1943

During the darkest days of the Second World War, on 25 October 1941, only months after German bombs had rained down on London like the Eumenides of Greek myth, Winston Churchill and Franklin Roosevelt announced concurrently that the world would hold Adolf Hitler and his regime accountable for their transgressions.² Less than three months later, nine representatives of occupied Europe met at Saint James's Palace in London and issued a similar condemnation of Nazi atrocities, proposing that their respective nations would “place among their principal war aims the punishment, through the channels of organized justice, of those guilty or responsible for those crimes.”³ While at the time it seemed uncertain that such vague promises would become a reality, these gestures, minor as they were, reflected the outrage felt by the individual parties concerning what they viewed as a war of aggression launched by Germany. Yet judgment of the Third *Reich*, once only hoped for, did transpire. Almost two years after the pronouncements of Churchill, Roosevelt, and the Declaration of St. James's Palace, Ares had closed his eyes to the *Wehrmacht* and denied it his favor. Although unbearable fighting raged in the Ukraine and on the Italian Peninsula, momentum rested with the Allies.

In October 1943, representatives of Great Britain, the Soviet Union, and the United States met in Moscow to solidify their dedication towards the complete defeat of the Axis

¹ Frank M. Buscher, *The U.S. War Crimes Trial Program in Germany, 1946-1955* (Westport, CT: Greenwood Press, 1989), 9.

² Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York: Alfred A. Knopf, 1992), 25.

³ Robert K. Woetzel, *The Nuremberg Trials in International Law* (New York: Frederick A. Praeger, Inc., 1960), 4.

Powers and lay the groundwork for the founding of the United Nations. One of the issues addressed at the Third Moscow Conference concerned the crimes perpetrated by members of the Third *Reich* and their punishment. During this conference, the agents of the “Big Three,” British Foreign Secretary Anthony Eden, Soviet Foreign Minister V.M. Molotov, and American Secretary of State Cordell Hull, constructed the Moscow Declaration based on the instructions of their respective leaders. The declaration stated that after the establishment of an armistice, the Allies would return those accused of atrocities to the countries in which those crimes had allegedly been committed. The respective governments would then try the defendants according to their laws. However, the declaration did not address the trial and punishment of those within the Nazi hierarchy who did not fall into the former category, only that the declaration’s signatories would decide it later.⁴

Although the Moscow Declaration did little to produce the actual mechanisms of what would become the International Military Tribunal, it did, according to Lieutenant Colonel Telford Taylor (who later served as an assistant prosecutor for the U.S. team at Nuremberg), establish the Big Three’s dominance in the construction of any postwar prosecutions. With their domain cemented at the expense of the United Nations War Crimes Commission (UNWCC), not to be confused with the United Nations founded in June 1945, the Big Three found themselves in a more advantageous position than the UNWCC, which Taylor claims wielded little actual authority due to the absence of the Soviet Union. The UNWCC, Taylor explains in his memoirs, was itself a civil body consisting of the United States, Great Britain, India, Australia, New Zealand, China, and

⁴ U.S. Department of State, “From *Declaration of German Atrocities, 1 November 1943*,” in *Foreign Relations of the United States: Diplomatic Papers, General, 1943*, <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=goto&id=FRUS.FRUS1943v01&isize=M&page=768> (accessed 19 December 2009).

the nine provisional governments in exile that had originally produced the Declaration of St. James's Palace.⁵ At the Third Moscow Conference, conflicts arose between the Allies regarding the fate of those deemed war criminals. Perhaps surprising to the modern reader, the British delegation called for the summary execution of all those suspected of atrocities (a sentiment later endorsed by the United States Treasury Secretary Henry Morgenthau, Jr.). Perhaps equally as startling was the Soviet Union's insistence on placing the Nazi hierarchy on trial. Smith notes that the latter revelation seems bizarre in that as a rule the Red Army inflicted the ultimate penalty on "Hitlerites" in the field.⁶ Between these two extremes, the task of creating a system acceptable to all parties fell to the United States, while the British, still intent on a political solution, assumed an investigative role.

Following the Moscow Conference, the Americans made little headway in the development of an appropriate method of prosecuting agents of the Third *Reich*, as responsibility rested primarily with the War and State Departments. Pressure, both internal and external, slowed the United States government's progression in the early months of 1944. How could the Allies purge Germany of the Nazi Party's influence without repeating the mistakes of Versailles? To complicate matters, the American Jewish Conference and the governments-in-exile pressed the disinterested Roosevelt Administration to adopt a punitive plan towards Hitler and Nazi Germany in the same vein as that conducted towards Imperial Germany following the First World War. Both the British and Americans were hesitant to endorse such rhetoric lest Anglo-American

⁵ Taylor, 26-7.

⁶ Bradley F. Smith, *The Road to Nuremberg* (New York: Basic Books, Inc., 1981), 10.

prisoners of war (POWs) face German retaliation.⁷ Yet during the early summer months, the British Foreign Office composed a roster of Nazi and *Wehrmacht* officials accused of war crimes while the Lord Chancellor, Lord John Simon, composed a memorandum reaffirming the political solution first suggested in Moscow. Later, the Foreign Office and Lord Chancellor submitted their material to the prime minister prior to Churchill's meeting with Roosevelt in Quebec on 12 September.⁸

However, across the Atlantic the Roosevelt Administration showed little such initiative in assuming their assigned function. Bradley F. Smith states that as late as 29 July 1944, President Franklin Roosevelt declared plans for a postwar trial of Nazi war criminals to be "premature."⁹ The Department of War's own inertia prompted the creation of an *ad hoc* policy for the occupation of Germany by the Supreme Headquarters, Allied Expeditionary Force (SHAEF). Under instructions from the Supreme Allied Commander General Dwight Eisenhower, SHAEF personnel fashioned the *Handbook for Military Government in Germany* that established governance through a central administration, the reinstatement of a civil government, and the restoration of the economy, and ordered the detainment of "250,000 high-ranking Nazis . . . [and] all members of the *Gestapo* and the *Sicherheitsdienst* (SD)."¹⁰

The SHAEF handbook, endorsed that August by Secretary of War Henry Stimson, might well have become the official American occupation policy had Morgenthau not traveled to Western Europe that same month. Appalled by what he viewed as an

⁷ Ibid., 8-9.

⁸ Taylor, 30.

⁹ Smith, *The Road to Nuremberg*, 13.

¹⁰ Buscher, 13.

extremely lenient occupation policy, the treasury secretary returned to the US determined to persuade Roosevelt to employ a draconian alternative.¹¹ The significant influence Morgenthau wielded over Roosevelt and within the cabinet is evident in a memo Roosevelt sent Stimson immediately following the former's meeting with Morgenthau. In the communication, dated 26 August, Roosevelt chastises his secretary of war, stating that the American occupation would not include the implementation of any programs similar to that of the New Deal and calls the handbook in general "pretty bad."¹² Roosevelt's condemnation of the handbook, coupled with Morgenthau's alternative, which the latter presented to the president in early September, set the tone for the American policy towards Germany going into the Second Quebec Conference.

The Morgenthau Plan, so named for its primary architect, called for the pastoralization of Germany through the elimination of its heavy industries and the destruction of its war-making capabilities to eliminate any future threat to Western Europe and the world. Consistent with the Treaty of Versailles, Secretary Morgenthau insisted that Germany pay significant reparations, a precept insisted on by the Soviets at the Moscow Conference.¹³ In regards to the treatment of war criminals, clauses (a) and (b) found in appendix B, section A, subsection (1) called for the arrest, identification, and execution by firing squad of arch-criminals recognized as such by the Allies.¹⁴ The plan contained no provisions for a trial of any kind for those identified as arch-criminals nor

¹¹ Smith, *The Road to Nuremberg*, 20-2.

¹² "From *Presidential Memorandum for the Secretary of War*," 26 August 1944, in Bradley F. Smith's *The American Road to Nuremberg: The Documentary Record, 1944-1945* (Stanford, CA: Hoover Institution Press, 1982), 20-1.

¹³ Buscher, 16.

¹⁴ "From *Henry Morgenthau Jr. to President Roosevelt (The Morgenthau Plan)*," 5 September 1944, in Smith's *The American Road to Nuremberg: The Documentary Record, 1944-1945*, 27-8.

did it cite specifically who those arch-criminals were.¹⁵ Fortunately for Morgenthau, the British corrected his omission by supplying a list of individuals who might fit the treasury secretary's obscure description of who an arch-criminal might be.

Although supplied with the Foreign Office's list of war criminals and Lord Simon's recommendation of punishment by summary execution, Churchill arrived in Quebec focused more on procuring American aid for the postwar reconstruction of Great Britain than on advancing the question of the Third *Reich*'s postwar prosecution and judgment. Serendipitously, the position endorsed by Lord Simon coincided with that of the Morgenthau Plan. Roosevelt's unexpected summons of Morgenthau to the conference, the treasury secretary's recognition of Britain's financial straits, and his willingness to exploit it led to the Anglo-American endorsement of the Morgenthau Plan.¹⁶ In spite of some misgivings by Churchill, the two statesmen agreed to present the plan, Lord Simon's memorandum, and the Foreign Office's list of war criminals to Josef Stalin at a later date.¹⁷

Despite Roosevelt's initial enthusiasm and Churchill's reluctant acceptance, the Morgenthau Plan's status as the favored occupation policy, as well as its agreement with the Lord Chancellor's proposal on the summary execution of arch-criminals, was short-lived. Shortly after Quebec, Secretary of State Hull warned Roosevelt that Stalin would never accept the Morgenthau Plan in that its provisions for the deindustrialization of Germany would conflict with the Soviets' desire for compensation.¹⁸ In addition, fearing

¹⁵ The portion of the memorandum entitled *Appendix B: Punishment of Certain War Crimes and Treatment of Special Groups* can be found in its entirety in Appendix A.

¹⁶ Smith, *The Road to Nuremberg*, 44-5.

¹⁷ Taylor, 31.

¹⁸ Buscher, 17.

that such a plan would cement German hostility after the war, Stimson and the Chief of Staff of the Army General George Marshall petitioned Roosevelt to consider other alternatives to the Morgenthau Plan.¹⁹

Provisionally for the War Department, the Nazi propaganda machine of *Reich* Minister Joseph Goebbels learned of the Morgenthau Plan and, in typical fashion, used it as motivation in urging the German people to fight to the death. Such propaganda led many in the American press to believe that the adoption of the Morgenthau Plan would only strengthen German resistance. Conscious of the negative reaction in the press, Roosevelt withdrew his earlier approval of the treasury secretary's plan.²⁰ By the time a visibly ill Roosevelt met with Churchill and Stalin at Yalta in February 1945, support within Roosevelt's cabinet for the Morgenthau Plan had vanished almost completely. In April, the punitive aspects of the Morgenthau Plan died with Roosevelt, although the British still pushed for a political solution rather than a judicial one. Roosevelt's successor, Harry Truman, "made it clear that he opposed summary execution and supported the creation of a tribunal to try the Nazi leaders."²¹ Stimson accommodated his new commander-in-chief with a proposal that had been incubating within the Roosevelt Cabinet for the past eight months.

Following Morgenthau's criticisms of the *Handbook for Military Government in Germany* and Roosevelt's subsequent rebuke the previous August, Stimson had conferred with his colleagues in the War Department and concluded that a system by which the Allies could charge and prosecute *Reich* officials would be preferable to the summary

¹⁹ Smith, *The Road to Nuremberg*, 48-9.

²⁰ *Ibid.*, 54-5.

²¹ Taylor, 32.

execution called for in the Morgenthau Plan and by British officials. On 28 August, after speaking by telephone with the Assistant Secretary of War John J. McCloy, Stimson decided that a trial system would best prevent the martyrdom of those individuals singled out for punishment.²² A week later, in the first of two telephone conversations with Major General Myron C. Cramer of the Judge Advocate General's (JAG) Office, Stimson asked Cramer for an opinion on the legality of establishing a commission to try the arch-criminals, the inclusion of civilians on the commission, and the wisdom of allowing them a traditional defense. After deliberation, the major general called back and informed Secretary Stimson that the creation of a hybrid commission or tribunal consisting of civilian and military personnel was, indeed, feasible.²³

Four days later, Stimson wrote to Roosevelt before the president left for Quebec outlining his objections to the Morgenthau Plan and offering the alternative framework based on his discussions with McCloy and Cramer. In the letter, Stimson argued that a publicized and simplified trial of the arch-criminals, which allowed the accused the right to counsel, to call witnesses, and speak in their defense, provided the Allies with the moral high ground while revealing to Germany the full extent of the crimes of its leadership.²⁴ Stimson viewed the latter aspect as beneficial in avoiding the mistakes of Versailles. Although the secretary of war's petition failed to sway the president away

²² U.S. Department of State, "From Report by the Assistant Secretary of War (McCloy) of a Telephone Conversation with Secretary of War Stimson, 12:30 PM, 28 August 1944," in *Foreign Relations of the United States, Conference at Quebec, 1944*, <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=goto&id=FRUS.FRUS1944&isize=M&page=76> (accessed 19 December 2009).

²³ "From Telephone Conversation between the Secretary of War (Henry Stimson) and the Judge Advocate General (Major General Myron C. Cramer)," 5 September 1944, in Smith's *The American Road to Nuremberg: The Documentary Record, 1944-1945*, 24-6.

²⁴ Buscher, 16-7.

from Morgenthau's proposal prior to the Quebec Conference, Stimson urged Cramer's office to formulate an alternative trial plan for Roosevelt.

As Roosevelt's support for the Morgenthau Plan wavered when confronted by Hull, Stimson, and a hostile press, the war department believed it had found a suitable, if imperfect, option to summary execution. Working in conjunction with JAG and the war department's civil affairs branch, Colonel Murray Bernays, chief of Special Projects Office in the Personnel (G1) branch and a lawyer in his civilian life, developed the foundation for that option. The proposal involved indicting the organizations and agencies affiliated with the Nazi regime on charges of conspiracy to commit war crimes, in addition to the war crimes themselves. On 15 September, using the *Gestapo*, *SD* (*Sicherheitdienst*), *SS* (*Schutzstaffel*), and *SA* (the virtually defunct *Sturmabteilung*) interchangeably in his brief, Colonel Bernays summarized his proposal to his superior, General Stephen G. Henry, stating that

the Nazi Government and its Party and State agencies, including the SA, SS, and Gestapo would be tried before an international court and charged with conspiracy to commit murder, terrorism, and the destruction of peaceful populations in violation of the laws of war.²⁵

The Bernays Plan acknowledged that many of the Nazis' offenses, including those against Germany's own people (particularly the Jews), did not fall under traditional war crimes. In addition, the plan recognized that, given the thousands of potential defendants, the time and expense devoted to trying them would likely allow many of the guilty to escape prosecution.²⁶ As such, Bernays proposed that the Allies try representatives of the indicted organizations first in a streamlined trial like that argued for by Stimson. After

²⁵ Smith, *The Road to Nuremberg*, 51.

²⁶ "From *Subject: Trial of European War Criminals (By Colonel Murray C. Bernays, G-1)*," 15 September 1944, in Smith's *The American Road to Nuremberg: The Documentary Record, 1944-1945*, 33-4.

the establishment of each organization's guilt, the Allies could then go back and try other identified members as part of that conspiracy.²⁷ Although it needed extensive revision, the Bernays Plan amassed support within the halls of the war department, albeit at a glacial pace.²⁸

The first modification to the Bernays Plan came when Cramer suggested to McCloy, whom Stimson had appointed to head the war department's development of a war crimes program, that the proposed trial system adopt the procedures and evidentiary procedures of a military tribunal, deny the defendants the right to appeal the verdict, and the direct implementation of the sentences passed.²⁹ Shortly thereafter, McCloy turned the Bernays' memorandum of 15 September over to Colonel Ammi Cutter, his assistant executive officer and a civilian lawyer, for review. In his reply to the assistant secretary of war, Cutter affirmed the ingenuity of the conspiracy charge and the inventiveness of trying the Nazi state as a criminal organization. However, Cutter cited several areas where the Bernays proposal veered sharply from traditional legal theory: the advantageous position of the prosecution and the novel approach of trying individuals for the crimes of the state. Presumably, continued Cutter, a large trial, or series of trials, might provide the defendants a platform for their own martyrdom.³⁰

Over the next month as Stimson garnered support for a trial system among Roosevelt's Cabinet officials, Bernays, Cutter, and the JAG Office continued refining the

²⁷ Ibid., 35-7.

²⁸ The Bernays memorandum entitled *Subject: Trial of European War Criminals (By Colonel Murray C. Bernays, G-1)* can be found in its entirety in Appendix B.

²⁹ Smith, *The Road to Nuremberg*, 56.

³⁰ "From *Memorandum for Mr. McCloy from Colonel Ammi Cutter, Assistant Executive Officer of the Assistant Secretary of War, Subject: War Crimes*," 1 October 1944, in Smith's *The American Road to Nuremberg: The Documentary Record, 1944-1945*, 37-8.

specifics of the Bernays Plan. On 24 October, Bernays presented the corrected proposal to Stimson who received it enthusiastically.³¹ While Stimson did not approve of the Bernays Plan officially, the secretary of war passed it on the departments of state and the navy. In a memorandum designated as a working draft dated 11 November, the secretaries of state, war, and the navy agreed to the tenets of the revised Bernays Plan. The revised plan expanded the original conspiracy charge beyond the commission of war crimes and aggressive war and included trying the Nazis for crimes committed against their own people before and during the war. Admittedly, the new charges presented a challenge to national sovereignty. The draft also suggested that, due to some of the plan's more inventive aspects, it would be best to create the court through international treaty, although the signatories admitted that the publication of the treaty might result in retribution against Allied POWs.³² Finally, on 21 November, Stimson introduced Bernays' proposal to Roosevelt who gave his blessing for its continued development.³³ Roosevelt then asked his close advisor, Judge Samuel Rosenman, to coordinate the departments' views on war crimes policy.³⁴

Having decided on the basic method of trying the arch-criminals and the scope of their alleged crimes, the next step involved solidifying the legal footing for the procedures and charges. While the charge of traditional "war crimes" encountered little opposition, the legitimacy of the charge labeled eventually as "crimes against peace," or

³¹ Smith, *The Road to Nuremberg*, 61-2.

³² "From *Draft Memorandum for the President from the Secretaries of State, War, and Navy, Subject: Trial and Punishment of European War Criminals*," 11 November 1944, in Smith's *The American Road to Nuremberg: The Documentary Record, 1944-1945*, 41-4.

³³ William J. Bosch, *Judgment on Nuremberg: American Attitudes Toward the Major German War-Crime Trials* (Chapel Hill: University of North Carolina Press, 1970), 62.

³⁴ Taylor, 38.

the waging of an aggressive war, required some considerable theoretical gymnastics. Throughout the world, conducting a war of aggression did not register as a crime. However, the Kellogg-Briand Pact of 1928, to which Germany, Italy, and Japan had all been signatories, both condemned and renounced war as an instrument of foreign policy.³⁵ Although the Kellogg-Briand Pact contained no punitive clause for its violation, the Deputy Director of Military Government, Colonel William Chanler, argued for its inclusion based on the claim that Nazi aggression against neutral countries was a breach of the treaty and, therefore, international law. Germany's violation of the treaty revoked its status as a lawful belligerent. Hence, Chanler reasoned, the Allies could punish Germany under the laws of the neutral countries it had invaded, citing Poland and, erroneously to some extent, Czechoslovakia as examples.³⁶ Writing well before Chanler developed his rationale, Justice Robert Jackson, who would eventually lead the American prosecution team at Nuremberg, went a step further, stating that the Kellogg-Briand Pact "created substantive law for its signatories and there resulted a *right* [italicized in the original] to enforce it by the general sanctions of international law."³⁷

The origins of international law, which lay at the foundation of the Allies' charge of aggressive war and in the arguments of those who challenged its legality, deserve some consideration and clarification. Both before the completion of the Trial of the Major War Criminals and in its aftermath, legal scholars debated what exactly constituted international law. While fluidity exists between the two extremes of strict pragmatism and strict positivism, to simplify, pragmatic-natural law argues that international law

³⁵ Bosch, 7.

³⁶ Taylor, 37.

³⁷ Robert H. Jackson, "From *The Challenge of International Lawlessness*," in *Perspectives on the Nuremberg Trial*, ed. Guénaél Mettraux (New York: Oxford University Press, 2008), 7-8.

flows from custom and the rights inherent to man, so that the criminalization of aggressive war and the creation of the IMT developed out of necessity rather than stemming from any established legal precedent.³⁸

However, legal positivists argue that it is agreements between states that create international law and that law binds only those nations that are a party to that agreement. These legal positivists have a contrasting view of Chanler's dependence on the Kellogg-Briand Pact. Arguing against the criminality of aggressive war, the absence of a penalty within the treaty implies that its violation is meaningless. In addition, legal positivists argue that the Allies engaged in waging aggressive war during the Second World War and that the IMT represented only the spoils of victory.³⁹ It follows then that the Allies' criminalization of aggressive war was a retroactive law, just as trying individuals for crimes committed by the state, and the IMT's rejection of superior orders as a defense, violates the doctrine of *nulla poena sine* since there is no precedent for either in international law.⁴⁰ Within JAG, Lieutenant Alwyn Freeman refuted Chanler's argument that existing international law criminalized aggressive war. In addition, he also rejected the criminality of the conspiracy charge in the Bernays Plan, arguing that it, like aggressive war, was not illegal under international law.⁴¹ The Department of Justice joined with JAG in its critical assessment of the plan's legal foundation.

Commenting on the trial as it was still in process, Sheldon Glueck, a professor of criminal law and criminology at Harvard, offered a rebuttal to the previous argument that

³⁸ Bosch, 56.

³⁹ Ibid., 44-5.

⁴⁰ Ibid., 50-2.

⁴¹ Smith, *The Road to Nuremberg*, 103-4.

the criminalization of aggressive war was *ex post facto*. He argued that, even if no statute existed outlawing aggressive war, Hitler and his officials knew that their actions were criminal and thus prosecution would be *ex post facto* in name only rather than spirit. This knowledge of criminality, Glueck reasoned, extended to the agent's culpability for the actions of the state they represent.⁴² In reference to the positivist assault on the IMT's rejection of the *respondeat superior* doctrine, the advocates of the IMT's legitimacy again refer back to the defendants' actual knowledge of their actions' criminality. Using the *British Manual of Military Law* as an example, Robert Woetzel asserts that "the military law of many civilised states contains express provisions to the effect that a subordinate must only obey lawful orders."⁴³

As the year ground to an end, the preceding arguments weighed heavily on the minds of the trial system's architects inside the state and war departments. The resignation of Secretary of State Hull, the inexperience of his successor Edward Stettinius, and the passivity of the naval secretary, James Forrestal, repositioned the development of a war crimes policy into a showdown between the Department of War and the Department of Justice, resulting in deadlock. While Morgenthau maintained his opposition to the idea of a trial system, his influence within the Cabinet had lessened significantly since the public's negative reaction towards his proposal had become clear that fall. However, a massacre, in a war filled with butchery, united the Roosevelt Cabinet and freed the war crimes proposal from its developmental purgatory. In December during the Battle of the Bulge, the *Waffen SS* executed more than seventy American POWs at Malmedy,

⁴² Sheldon Glueck, *The Nuremberg Trial and Aggressive War* (New York: Alfred A. Knopf, Inc, 1946), 83.

⁴³ Woetzel, 118.

Belgium. Buttressing a massive public outcry, their own revulsion stiffened the resolve of the Cabinet officials and reinvigorated the process.

While JAG retained some reservations about the plan's legal footing, Attorney General Francis Biddle reversed the Justice Department's prior stance and, along with Stimson and Stettinius, endorsed the Bernays Plan. After several revisions, Stimson forwarded it to Roosevelt on 22 January. The revised plan called for an international military tribunal established by executive agreement rather than by treaty and inserted the charge of *joint participation in a criminal enterprise* in place of the conspiracy charge.⁴⁴ While Stimson and Biddle intended that Roosevelt discuss the memo with Stalin and Churchill at the Yalta Conference the following month, other events prevented this from transpiring.⁴⁵

Later that spring, Lord Simon invited Rosenman to London in the hope that the British and Americans could reach a compromise. The Lord Chancellor agreed to drop Britain's demand for summary execution of the arch-criminals and offered an arraignment in lieu of a full trial. In the memorandum sent to Rosenman, Lord Simon wrote:

The Allies should draw up . . . a "*document of arraignment* [italicized in the original]" in somewhat general terms and that an inter-allied judicial tribunal . . . should be appointed to report upon the truth of this Arraignment after Hitler and Co. had been brought before the tribunal and given the opportunity to challenge the truth

⁴⁴ "From *Memorandum for the President, Subject: Trial and Punishment of Nazi War Criminals, 22 January 1945*," in *Foreign Relations of the United States, Conferences at Malta and Yalta, 1945*, <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=goto&id=FRUS.FRUS1945&isize=M&page=403> (accessed 19 December 2009).
*Author's note: The *Memorandum for the President, Subject: Trial and Punishment of Nazi War Criminals* can be found in its entirety in Appendix C.

⁴⁵ Robert E. Conot, *Justice at Nuremberg* (New York: Carroll & Graf Publishers, Inc., 1984), 13.

of its content, if they could.⁴⁶

Rosenman felt the Lord Chancellor's concession afforded the United States its best opportunity to advance a joint Anglo-American plan and, on 5 April, he received the authority to draft an agreement from acting Secretary of State Dean Acheson.⁴⁷

However, Britain's War Cabinet soon disavowed the Lord Chancellor's proposal and reaffirmed its desire for a political solution. Coupled with Rosenman's departure for Roosevelt's funeral, this action ended any hope for an Anglo-American policy prior to the San Francisco Conference in May. However, while Rosenman left Britain deflated, his compatriot John McCloy obtained vital support from a contentious ally. While in Europe, the assistant secretary of war learned that Charles de Gaulle, speaking tentatively for the Provisional French Republic, did not object to a trial.⁴⁸ With Soviet and, presumably, French support, the Americans felt that Britain would agree eventually to a trial system.

Truman's commitment to a trial system, noted above, allowed the Bernays Plan to progress unhindered. On 26 April, Truman appointed Justice Jackson to lead the American prosecution team for the duration of the war crimes program. With Jackson's assistance, McCloy, Bernays, and Assistant Attorney General Herbert Wechsler drafted an executive agreement for presentation along with the Bernays Plan to the British and

⁴⁶ From "Memorandum to Judge Rosenman from Lord Simon (Lord Chancellor), 6 April 1945," in *Foreign Relations of the United States : Diplomatic Papers, European Advisory Commission, Austria, Germany, 1945*, <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=turn&entity=FRUS.FRUS1945v03.p1170&id=FRUS.FRUS1945v03&isize=M&q1=document%20of%20arraignment> (accessed 19 December 2009).

⁴⁷ Smith, *The Road to Nuremberg*, 172-4.

⁴⁸ *Ibid.*, 188-90.

Soviet delegations in San Francisco on 3 May.⁴⁹ At the conference, the “Big Three” invited France to participate in additional meetings, while the British dropped their insistence on summary executions and stated that they would go along with a trial plan. Robert Conot suggests that Hitler’s apparent demise, later confirmed, influenced the British delegation’s decision. Although Rosenman did present the American war crimes proposal along with the executive agreement, the three visiting powers could not assent to the executive agreement, as Molotov had not received authorization from Moscow to do so. However, by the middle of May, Molotov, Eden, and the French Foreign Minister, Georges Bidault, joined Stettinius in agreeing to the basic tenets of the Bernays Plan.⁵⁰ Over the summer months, the four powers would resolve areas of contention within the Americans’ trial proposal and construct a binding agreement.

On 26 June, Jackson and the American delegation met with their counterparts from France, Britain, and the Soviet Union at the International Conference on Military Trials in London. Confusion marked the early stages of the conference. Unfamiliarity with some of the procedures, concepts, and legalese laid out in the American proposal and a misinterpretation of the tribunal’s intended role were but some of the obstacles the delegates faced. The charge of conspiracy, a staple in the American criminal code since the Gilded Age and familiar as a legal concept to the British was foreign to both continental and Soviet legal traditions. In addition, the French delegate Robert Falco, accustomed to the continental system, voiced his displeasure that the defendants would not have full knowledge of the prosecution’s evidence against them. Telford Taylor

⁴⁹ The Avalon Project, Yale School of Law, “*Executive Agreement Relating to the Prosecution of European Axis War Criminals, 30 June 1945*,” <http://avalon.law.yale.edu/imt/jack18.asp> (accessed 7 January 2010).

*Arthur’s note: This is the final draft signed by the foreign ministers and can be found in Appendix D.

⁵⁰ Conot, 15.

recalls that the four delegations reached a compromise rather quickly, allowing for some, but not all, of the evidence against the defendants to accompany the indictment.⁵¹

The Soviet delegates, I.T. Nikitchenko and A.N. Trainin, also had difficulty with some of the procedures, particularly the process of cross-examination.⁵² However, the Soviets' bewilderment over procedure seems almost trivial compared to their objections to trying the Nazi organizations alongside individuals. This provision, found in Article Six of the proposed agreement, created the foundation for the future indictment of secondary Nazi officials. At Yalta, Nikitchenko argued, the "Big Three" had already declared the criminality of the organizations. The purpose of the IMT, he believed, was only to determine the individual member's level of guilt and then pass sentence. After considerable deliberation, the delegates repositioned the conspiracy clause to read that a conviction of any of the other three charges resulted also in a conviction on the conspiracy count. However, in the indictment, the conspiracy charge remained listed as count one. Satisfied, the Soviets went along with the American plan.⁵³

Similar debates continued throughout the duration of the London Conference. The French echoed the earlier argument put forth by the American JAG officer Freeman that launching an aggressive war was not illegal under international law and punishment remained *ex post facto*. Eventually, the delegates reworded the clause so that the French found it tolerable if not ideal.⁵⁴ Finally, on 8 August, Jackson, Falco, Nikitchenko,

⁵¹ Taylor, 64.

⁵² Ibid.

⁵³ Ibid., 59-60.

⁵⁴ Ibid., 66.

Trainin, and the new Lord Chancellor, William Jowitt, signed the agreement establishing the London Charter for the International Military Tribunal.

Under the terms of the London Charter, the tribunal would consist of eight total members, a representative and alternate chosen by each signatory. The Charter afforded the defendants most of the rights associated with the Anglo-American and continental trial systems; however, the convicted could not appeal their conviction to a higher court. The charges consisted of four counts: crimes against peace, war crimes, crimes against humanity, and the aforementioned charge of conspiracy to commit any of the foregoing crimes, which the members of tribunal later applied only to count two. In addition, the Charter forbade the usage of “acting in an official capacity” as a primary defense, although the tribunal would consider *respondeat superior* as a mitigating circumstance during sentencing. The IMT’s charter consisted of thirty articles divided into seven sections. For the sake of brevity, only the individual sections of the charter appear below to serve as a future reference point in future chapters:

- I. Constitution of the International Military Tribunal
- II. Jurisdiction of and General Principles
- III. Committee for the Investigation and Prosecution of Major War Criminals
- IV. Fair Trial for Defendants
- V. Powers of the Tribunal and Conduct of the Trial
- VI. The Judgment and Sentence
- VII. Expenses⁵⁵

The participants then decided that the Americans would conduct the prosecution as it related to the conspiracy charge. The British would oversee count two, the waging of aggressive war or crimes against peace. The French prosecutors would undertake count three, war crimes. Finally, the Russians would assume responsibility for trying the

⁵⁵ The Avalon Project, Yale School of Law, “From *Agreement and Charter*, 8 August 1945,” <http://avalon.law.yale.edu/imt/jack60.asp> (accessed 20 January 2010).

*Author’s note: The *Agreement and Charter* can be found in its entirety in Appendix E.

accused on count four, crimes against humanity, as the majority of crimes associated with the charge had taken place in territory now occupied by the Soviet Union.

After six years of war and millions of lives lost, destroyed, and uprooted, the Allies prepared to try the remnants of the Third *Reich*. The four prosecution teams of the Charter's signatories now faced the daunting task of gathering evidence, selecting Morgenthau's arch-criminals, and trying them as most of the world looked on. With hundreds of potential defendants available, choosing an appropriate cross-section of officials who were representative of the organizations charged proved challenging. Most names did not resonate in the ears of the public. Yet of the twenty-four men indicted, twenty-one came to sit in the dock at Nuremberg. To the world, these men would soon represent the Nazi regime and their names would become synonymous with those of Hitler, Goebbels, and *Reichsführer-SS* Heinrich Himmler.

CHAPTER TWO

MURDERERS' ROW: THE ACCUSED AS DEPICTED IN THE AMERICAN PRESS

“We must make it clear to the Germans that the wrong for which their fallen leaders are on trial is not that they lost the war, but that they started it.”¹ – Justice Robert H. Jackson, 8 August 1945

The suicides of Hitler, Goebbels, and Himmler forced the Allies to expand the list of “arch-criminals” indicted for prosecution. In the deceaseds’ stead, the four prosecution teams selected a cross-section of representatives from the indicted organizations: the Nazi Party leadership, the *Reich* Cabinet, the SS, SA, SD, *Gestapo*, and the loosely termed General Staff and High Command (although the prosecution would present its case against the SD congruently with that of the *Gestapo*). Of the twenty-four men listed in the original indictment, the majority were already in the custody of the British and the Americans. So, too, did France and the Soviet Union produce three prisoners for prosecution. In a conciliatory gesture towards their still skeptical partners, the Americans and British accepted the Soviet submission of the previously retired Grand Admiral Erich Raeder and a functionary in Goebbels’ Ministry of Propaganda and Public Enlightenment, Hans Fritzsche. Likewise, the French prosecution team’s offering of the former Foreign Minister Constantin von Neurath met with no objection.²

However, some of the other individuals listed in the indictment presented their own unique set of circumstances. The patriarch of the Krupp munitions dynasty, Gustav Krupp von Bohlen und Halbach, had been merely a figurehead in the company since suffering a stroke in 1941. He had remained enfeebled in both mind and body since and his active participation in the proceedings was in doubt as he lay in an American military hospital in Salzburg. Unlike Krupp, who posed little flight risk, the twenty-fourth

¹ Associated Press, “Statement by Jackson,” *The New York Times*, 9 August 1945.

² Taylor, 62-3.

indictree, Nazi Party Secretary Martin Bormann, remained at large although presumably deceased. Others among the indicted presented less overt, yet compelling, circumstances that would hinder their prosecution.

Upon the release of the names slated for indictment, the coverage they garnered among the American press varied from publication to publication, as did the description of the accused. Of the five newspapers, the announcement of those selected for prosecution made the front page of the 30 August 1945 editions of *The Times*, *The Post*, *LA Times*, and *The Journal*. On the same day, the *Tribune* relegated the publication of the list to page five. In addition to the positioning of the individual articles, their length and depth also differed. Devoted primarily to business and finance, *The Journal's* article took up less than one quarter of a single column and merely listed the accused along with a superficial and, as discussed below, often-misleading title. Like *The Wall Street Journal*, the *Tribune* limited its coverage to a single page although it provided a less perfunctory description of the accused. *The Times*, *LA Times* and *The Post* surpassed the preceding two newspapers' coverage in article length, if not depth. All three continued their respective articles on an interior page.

In the *LA Times*, Raymond Moley, a columnist known for his work in *Newsweek*, provided commentary on the selection of the defendants and their potential defenses. In an erroneous prediction, Moley suggested that Hermann Göring would testify against his fellow Nazis in return for a prison sentence, foregoing the death penalty that would assuredly accompany his conviction. The columnist admitted that the trial was without precedent as would be its punishments apparently in recognition of the controversy surrounding the IMT's creation. However, Moley argued that the trial process should not offend humanity's collective conscience, as the Nazis' crimes presented "an unusual

case.”³ It would be from these and subsequent articles that the public’s general perception of the accused would be formed beginning with the former *Reichsmarschall*, Hermann Göring.

Drug-addled and corpulent upon his surrender to the Americans, Göring provided the last direct link to Hitler’s inner circle (assuming Bormann was, in fact, dead) and was the most polarizing figure among the defendants. From the moment of his incarceration, the press identified the unrepentant Nazi as the focal point that the other defendants would alternately rally around and assail.⁴ *The New York Times* portrayed him initially as “Hitler’s right-hand man,” the head of the *Luftwaffe*, a member of the Elite Guard (SS) and SA, and Hitler’s former successor-designate.⁵ The description appears detailed in comparison to similar articles published on 30 August, as the usage of the word “former” in reference to his position as Hitler’s onetime designated successor seems to allude to Göring’s falling-out with Hitler. However, the article did not provide further explanation. The *LA Times* depicted Göring in a similar fashion, though omitting any direct reference to the former *Reichsmarschall*’s ouster as Hitler’s political heir. However, unlike the other four newspapers, the *LA Times* speculated that Göring might face prosecution for the bombing of Rotterdam in the Netherlands. In addition, it suggested that the Allies would also hold the former head of the *Luftwaffe* accountable for authorizing the execution of those Allied airmen who attempted to escape from

³ Raymond Moley, “The First Twenty-Four,” *Los Angeles Times*, 4 September 1945.

⁴ Kathleen McLaughlin, “GOERING ‘ENLIVENS’ NUREMBERG FLIGHT,” *The New York Times*, 14 August 1945.

⁵ Wire Report, “GOERING, 23 OTHERS INDICTED BY ALLIES,” *The New York Times*, 30 August 1945.

prisoner of war camps.⁶ This latter contention of the west coast paper would prove correct.

At the time of the article's publication, the Allied prosecution teams had yet to complete the formal indictment charging each of the accused on specific counts. The *Chicago Daily Tribune* referred to Göring's ouster from Hitler's inner circle, along with his duties in the German Air Force, in its brief introduction.⁷ *The Wall Street Journal* similarly referred to Göring as "air force commander" but contradicted *The Times* account by referring to former Deputy *Führer* Rudolf Hess as "Hitler's right-hand man."⁸ The basis for this interpretation is unclear as the latter had been in British custody since his bizarre flight to Scotland in May 1941. Finally, *The Post* article echoed the *Tribune's* characterization of Göring, along with his fall from grace.⁹

After his inclusion in the initial listing of war criminals selected for prosecution at Nuremberg, subsequent reports detailing Göring's background and the counts for which he was charged varied. Of the five newspapers selected, *The Times* provided the most extensive coverage, publishing the indictment in its entirety along with editorial commentary in a five-page exposé on 19 October. The indictment's Appendix A, printed verbatim in *The Times*, charged Göring with all four counts and listed his multiple roles within the *Reich*, including his former position as both the Plenipotentiary of Germany's

⁶ United Press, "Allied Tribunal to Try 24 High-Ranking Nazis," *Los Angeles Times*, 30 August 1945.

⁷ Associated Press, "24 NAZIS LISTED FOR MASS TRIAL ON WAR CRIMES," *Chicago Daily Tribune*, 30 August 1945.

⁸ Wire Report, "What's News-World Wide," *The Wall Street Journal*, 30 August 1945.

⁹ Associated Press, "Goering Heads 24 Top Nazis Called to Trial," *The Washington Post*, 30 August 1945.

Four Year Plan and Chief of the Prussian Secret State Police.¹⁰ Coverage in the *LA Times* reflected that of the New York daily, with Göring “heading the list” of defendants. Among those indicted, only the former *Reichsmarschall* had his individual indictment published.¹¹

While devoting more space to its coverage of the indictment than that provided in its article of 30 August, the *Tribune* relegated the bulk of the article to page ten after an introductory column on its front page. The article reported that the IMT had indicted Göring on all four counts but did not provide additional information on his role within the *Reich* as it pertained to the charges.¹² While providing a lengthier examination of the indictment and the evidence on which the charges rested than that found in the *Tribune*, *The Post* did not list the counts each individual defendant faced.¹³ On the same day, *The Wall Street Journal* also published a brief, straightforward account of the indictment listing the charges but, like *The Post*, did not specify which counts each defendant faced.¹⁴ Regardless of the extensiveness of each paper’s coverage one constant emerged, the press’s emphasis on Herr Göring. Just as Kathleen McLaughlin, a foreign correspondent for *The New York Times*, had identified Göring as the epicenter around

¹⁰ Wire Report, “Text of Indictment of Major War Criminals Before the International Military Tribunal,” *The New York Times*, 19 October 1945.

¹¹ Associated Press, “Allies Indict 24 Top Nazis,” *Los Angeles Times*, 19 October 1945.

¹² Associated Press, “24 INDICTED FOR PLOT AGAINST WORLD PEACE,” *Chicago Daily Tribune*, 19 October 1945.

¹³ Dougald Werner, “24 Top Nazis Indicted for Starting War Atrocities,” *The Washington Post*, 19 October 1945.

¹⁴ Wire Report, “Allies Indict 24 Nazis on War Crimes, 10 Million Deaths, \$160 Billion Looted,” *The Wall Street Journal*, 19 October 1945.

which the other defendants would revolve like so many satellites, so, too, did he become something of a lightning rod among the press.

Almost approaching the notoriety of his former comrade, Rudolf Hess captured the attention of the American press albeit more for his mental instability than for any blustering. Indicted on all four counts for his membership in the NSDAP, SS, and SA, members of the IMT early on called into question Hess's competency to stand trial.¹⁵ Having maintained that he suffered from amnesia since his capture, Hess's self-diagnosis seemed to gain credibility after undergoing a battery of psychiatric tests leading up to and during the trial. *The Times* reported that after evaluating Hess most of the psychiatrists concluded that he suffered from partial amnesia, particularly in response to his behavior following his viewing of newsreel footage taken during the apex of the Third *Reich*. While Hess recognized Hitler, Göring, and other former colleagues shown on screen, the article reported, the defendant could not recall participating in the events captured on film.¹⁶

On 3 November, the *Tribune* reported that a majority of those who had examined Hess believed his condition to be legitimate and speculated that the former Deputy *Führer* would not face prosecution.¹⁷ Likewise, the *LA Times* reported that Hess's participation in the trial remained in doubt.¹⁸ However, *The Times* characterized Hess's

¹⁵ Airey Neave, *On Trial at Nuremberg* (Boston: Little, Brown, & Co., 1978), 247-51.

¹⁶ Associated Press, "Movie of Hess With German Chiefs Shown to Him to Restore Memory," *The New York Times*, 9 November 1945.

¹⁷ Associated Press, "Believe Hess Insane; May Escape Trial," *Chicago Daily Tribune*, 3 November 1945.

¹⁸ George Tucker, "Trial of Hess Held Unlikely," *Los Angeles Times*, 3 November 1945.

condition as a ploy, describing his indifference upon receiving the formal indictment from his jailers as “praying [sic] insane in an attempt to cheat justice.”¹⁹

Hess’s behavior after the trial began seemed to confirm their suspicions. Rejecting the advice of his lawyers, the gaunt Hess petitioned the tribunal for an audience and announced to its members that he had faked his amnesia and was prepared to take an active role in his own defense.²⁰ *The Post* also reported that Hess had feigned loss of memory as a temporary defense tactic while he evaluated the mechanics of the IMT.²¹ As the American prosecutor Telford Taylor notes in his memoirs, the legitimacy of Hess’s statement and his overall mental capacity remained an issue of contention among the members of the tribunal. An unwillingness to upset the Soviets, Taylor concludes, likely contributed to the tribunal’s ruling.²² However, the day after Hess’s announcement, the IMT ruled that he was mentally competent to stand trial.²³

Unlike Hess, the IMT chose to excuse his fellow defendant, the elderly Krupp. Initially selected to placate calls for accountability among German industrialists, Allied prosecutors had charged Krupp with all four counts, citing, among other things, that his support facilitated Hitler’s rise to power and that Krupp Armaments had utilized slave

¹⁹ United Press, “Hess Stares Blankly,” *The New York Times*, 20 October 1945.

²⁰ Wire Report, “Hess Admits He Faked Loss of Memory, Asks Continued Trial as War Criminal,” *The Wall Street Journal*, 1 December 1945.

²¹ Associated Press, “Hess Tells Court His Amnesia Was a Fraud,” *The Washington Post*, 1 December 1945.

²² Taylor, 179-80.

²³ Associated Press, “COURT RULES HESS MUST STAND TRIAL WITH COLLEAGUES,” *The New York Times*, 2 December 1945.

labor.²⁴ The situation surrounding Krupp's health attracted considerable attention in three of the five newspapers examined. While *The Wall Street Journal* and *The Washington Post* chose not to follow the story, the remaining three papers followed the sparring between the prosecution, defense, and tribunal over the septuagenarian's fitness to stand trial.

As Krupp's dismissal seemed imminent, Robert Jackson requested that the prosecution substitute Krupp's son Alfried in place of his father. The younger Krupp had taken an active role in the day-to-day management of the family holdings following his father's incapacitation in 1941. Jackson's British counterparts suggested that, like Bormann, the IMT try the elder Krupp in absentia.²⁵ After some deliberation, the IMT rejected both suggestions and indicated that Gustav Krupp would remain under indictment but tried later if his condition improved.²⁶

In contrast to the divergent coverage surrounding Hess's competency, *The New York Times*, *Tribune*, and *LA Times* presented a unified front in their framing of the Krupp proceedings. The consensus among the publications that reported on the ruling presented the loss of Krupp as a blow to the prosecution, specifically to Justice Jackson. In a ruling that lasted less than a minute, the IMT flatly denied his motion to indict Alfried Krupp and offered little justification for their decision.²⁷ Oddly, the *Tribune* chose not to attack Jackson or the attempted substitution of Krupp on its editorial page despite being an

²⁴ Wire Report, "Text of Indictment of Major War Criminals Before the International Military Tribunal," *The New York Times*, 19 October 1945.

²⁵ McLaughlin, "Krupp III, U.S. Seeks to Indict Son; British Ask Absentia Trial of Father," *The New York News*, 13 November 1945.

²⁶ Hal Foust, "BAR KRUPP SON AT WAR TRIAL IN FATHER'S PLACE," *Chicago Sunday Tribune*, 18 November 1945.

²⁷ Associated Press, "Indictment of Krupp Son Fails," *Los Angeles Times*, 18 November 1945.

ardent critic of the IMT since its formation in August, referring to its charter as a “streamlined lynch law.”²⁸ However, the *Chicago Daily Tribune*’s silence might have stemmed from a desire not to draw attention to the apparent fairness of the IMT’s decision.

The ambiguity surrounding Martin Bormann’s status also provided fodder for the print media and gave rise to rampant gossip and conjecture. The *LA Times* speculated that the former NSDAP Secretary had escaped the rubble of Berlin and survived long enough to be captured based on his inclusion in the list published on 30 August.²⁹ *The Post* supported this dubious assumption, suggesting that Bormann was in Soviet custody. Their source, and likely that of the *LA Times*, lay within Justice Jackson’s Washington D.C. office which offered that “we don’t know where he is. But the fact that his name is on the list means that he is alive and in custody.”³⁰ The *Tribune* cited the same Associated Press (AP) report in its 30 August edition, but did not supply any details of Bormann’s role within the *Reich*.³¹ After the prosecution released the full indictment, the *Tribune* named Bormann as the head of both the SA and *Volkssturm* (the militia charged with defending the *Reich* during its dying days). In contrast to Hitler’s other former intimates, Göring and Hess, the indictment charged Bormann only with counts one, three, and four.³²

²⁸ Editorial, “SPEAKING OF WAR CRIMINALS-,” *Chicago Daily Tribune*, 6 September 1945.

²⁹ United Press, “Allied Tribunal to Try 24 High-Ranking Nazis,” *Los Angeles Times*, 30 August 1945.

³⁰ Associated Press, “Goering Heads 24 Top Nazis Called to Trial,” *The Washington Post*, 30 August 1945.

³¹ Associated Press, “24 NAZIS LISTED FOR MASS TRIAL ON WAR CRIMES,” *Chicago Daily Tribune*, 30 August 1945.

³² Associated Press, “24 INDICTED FOR PLOT AGAINST WORLD PEACE,” *Chicago Daily Tribune*, 19 October 1945.

In keeping with a developing trend, *The Times* provided much of the detail about Bormann and his status, publishing several reports of his supposed whereabouts. As it had done with the other defendants, *The Times* listed Bormann in its preliminary announcement of the indicted on 30 August and again when it published the full indictment on 19 October, citing similar details found in the *Tribune* regarding Bormann's duties within the *Reich*. In reference to the theories put forth in the *LA Times*, *The Post*, and *Tribune* concerning Bormann's location, *The New York Times* supported the assumption that he was in Soviet hands. However, it cited British Field Marshal Sir Bernard Law Montgomery's headquarters in Hamburg rather than Justice Jackson's office as its source.³³ As the trial neared, Bormann remained at large although British prosecutor Sir Hartley Shawcross maintained "there was 'less reason [to believe] that Bormann might be dead'" and that he should remain under indictment.³⁴ A follow-up article published in *The Times* twelve days later echoed Shawcross's confidence. The article reasoned that Bormann's attempt to escape Berlin and contact Hitler's successor, Grand Admiral Karl Dönitz, indicated a survivalist instinct and justified Bormann's inclusion in the indictment.³⁵

The prosecution's resolve appeared to falter, however, as Jackson later admitted that the IMT might drop the indictment against Bormann after the latter failed to surface.³⁶ Jackson's fears never came to fruition as the IMT ruled that Bormann remain under

³³ Associated Press, "RUSSIANS REPORT BORMANN ARREST," *The New York Times*, 1 September 1945.

³⁴ United Press, "Hess and Bormann Top List," *The New York Times*, 8 October 1945.

³⁵ Reuter [sic], "Bormann Trip Thwarted," *The New York Times*, 20 October 1945.

³⁶ United Press, "BORMAN INDICTMENT MAY BE ABANDONED," *The New York Times*, 8 November 1945.

indictment and tried in absentia in the event he surfaced. Converse to its fellow New York publication, *The Wall Street Journal* continued its subdued and sporadic treatment of the Trial of the Major War Criminals, a trend that would continue throughout the next sixteen months. The financial journal never addressed Bormann's whereabouts or the charges he faced, describing him simply as "Hitler's secretary."³⁷

Prior to the onset of the trial, the remaining defendants, often referred to as the "Nazi small fry" in the publications, usually did not attract the attention of the previous four. However, some deviations from this trend arose. Dr. Robert Ley, certainly not a prominent name during the war, presented one such divergence. Initially, the five newspapers' aforementioned editions of 30 August and 19 October depicted Ley, once the head of the German Labor Front, in a fashion quite similar to those of his cohorts. The *Tribune* and *The Times* both reported that the Allies had indicted Ley on counts one, three, and four, while *The Times* noted that Ley's crimes stemmed from his utilization of slave labor.³⁸

The focus on Ley arose from his response to the indictment served to him. The *LA Times* reported that upon receiving his indictment, Ley accused the Allies of retroactive prosecution, protesting that "God first made the Ten Commandments and judged people by them afterwards."³⁹ In the publications examined, this utterance by Ley represented the first attack on the trial by one of the indicted using the *ex post facto* argument. The article also reported Jackson's response to Ley's concerns, citing the Supreme Court

³⁷ Wire Report, "What's News-World Wide," *The Wall Street Journal*, 30 August 1945.

³⁸ Wire Report, "Text of Indictment of Major War Criminals Before the International Military Tribunal," *The New York Times*, 19 October 1945.

³⁹ Associated Press, "Nazis Look Like Students as They Study Indictments," *Los Angeles Times*, 21 October 1945.

justice's assurances that the IMT's charter had already resolved the issue.⁴⁰ The *Chicago Daily Tribune* also reported Ley's criticisms, as well as Jackson's retort, in its 21 October edition.

The defendant, however, would not live long enough to enter the dock. On 26 October, the media reported that the former Nazi labor leader had killed himself inside his cell at Nuremberg by fashioning a noose from a bath towel suspended from a pipe and choking himself to death. News of Ley's suicide ran on the front page of each of the five newspapers. Consistently restrained, *The Journal's* coverage consisted of six lines at the bottom of page one mentioning Ley's former office and the means of his suicide.⁴¹ *The Post* described the conditions surrounding Ley's suicide in considerable detail, noting how he had hidden himself from view in the alcove that housed his toilet and gagged himself so as not to alert his guards before the act could be completed.⁴² *The Tribune* cited the same AP report, adding that Ley's jailers had taken precautions against such acts and had attempted artificial respiration upon discovering the deceased. The article noted that Ley had displayed considerable emotional distress during his incarceration and had attempted to poison himself following his capture in May.⁴³ In the *LA Times*, coverage of Ley's suicide reflected that found in the *Tribune*, adding the he had been a veteran of the First World War and an alcoholic.⁴⁴ In addition to the information

⁴⁰ Ibid.

⁴¹ Wireless Report, "What's News-World Wide," *The Wall Street Journal*, 26 October 1945.

⁴² Associated Press, "Labor Front Chief Uses Towel-Rope To End Life," *The Washington Post*, 26 October 1945.

⁴³ Associated Press, "Ley, No. 4 Nazi, Ends Life," *Chicago Daily Tribune*, 26 October 1945.

⁴⁴ United Press, "LEY, NAZI LABOR CHIEF, KILLS HIMSELF," *Los Angeles Times*, 26 October 1945.

published in the *Tribune* and *LA Times*, *The Times* offered an obituary of sorts and noted that Ley's fellow defendants, save Julius Streicher, had snubbed him in the weeks leading up to his death.⁴⁵

With the exception of *The Wall Street Journal*, the following day brought with it the publication of Ley's final testament, which made the front page in all but *The Post*, which printed the story on its second page. In his suicide note, Ley expressed his desire to join Hitler in death and suggested that God had forsaken the Nazis because of their anti-Semitism.⁴⁶ The *LA Times* reported that in Ley's testament, he complimented his jailers and their treatment of him, noting that the "Americans are correct and partly [sic] friendly."⁴⁷ The article offered no speculation on whether the first portion of the previous quote referred to the Americans' professional conduct or Ley's acceptance of the charges levied against him. It likely refers to the captors' conduct, although the repentant tone of Ley's testament might indicate otherwise. On page four, the *LA Times* also published reactions from Ley's fellow defendants. Göring, the article reported, rejoiced after receiving news of Ley's demise. Although prison officials did not relate the cause of death, the article noted that Streicher suspected it was a suicide and likened Ley to a pig.⁴⁸

As it had with Göring, Hess, and Bormann, *The Times* provided the most coverage of the five newspapers and offered the only analysis of the suicide. In addition to the AP

⁴⁵ Drew Middleton, "Ley Kills Himself in Prison in Fear of War-Crimes Trial," *The New York Times*, 26 October 1945.

⁴⁶ Associated Press, "ANTI-SEMITISM DOOMED NAZIS, WRITES DR. LEY," *Chicago Daily Tribune*, 27 October 1945.

⁴⁷ United Press, "Ley, in Death, Recants Crimes Against Jews," *Los Angeles Times*, 27 October 1945.

⁴⁸ United Press, "Goering Laughs When Informed of Ley Suicide," *Los Angeles Times*, 27 October 1945.

report utilized by the *Tribune*, the New York paper printed Ley's final testament in its entirety as well as an article by its military correspondent, Drew Middleton, suggesting that his death fulfilled a suicide pact made with Goebbels.⁴⁹ Finally, *The New York Times* suggested on its editorial page that Ley's suicide, like his alcoholism, indicated signs of remorse for his past brutality.⁵⁰

The print media's description of the surviving defendants did not provide the high drama of those discussed previously. However, the majority of the newspapers reported the overt anti-Semitism of Julius Streicher, albeit periodically. The *Chicago Daily Tribune* also characterized Streicher as being "an originator of the anti-Semitic movement."⁵¹ Early in *The Times'* coverage of the accused, Middleton labeled the former publisher of *Der Sturmer* and NSDAP *Gauleiter* of Franconia the "high-priest' of anti-Semitism."⁵² In his description, the American reporter engaged in no mere hyperbole. Indicted on counts one and four, Streicher did little to distance himself from his reputation as a rabid anti-Semite who, the Allies contended, had encouraged violence against Jews through his newspaper. Even while incarcerated, the man who had spread obscene anti-Jewish propaganda across Germany during the 1930s continued spewing his bile.

Streicher's conduct won him little sympathy in the press or with those asked to defend him. The *LA Times*, *The Times*, and the *Tribune* reported that, upon being handed

⁴⁹ Middleton, "Suicide Pact Implied," *The New York Times*, 27 October 1945.

⁵⁰ Editorial, "DEATH OF A NAZI," *The New York Times*, 27 October 1945.

⁵¹ Associated Press, "HUMANITY HIT BY NAZI CRIMES, ALLIES CHARGE," *Chicago Daily Tribune*, 12 October 1945.

⁵² Middleton, "10 GERMAN LEADERS FIRST TO BE TRIED," *The New York Times*, 8 August 1945.

a list of counsel available for his defense, Streicher scoffed at several names he identified as being of Jewish origin, informing his guards, “I could not ask a Jew to defend me.”⁵³ Streicher’s obstinacy later hindered his defense, as the attorney who came to represent him, Dr. Hans Marx, found Streicher’s conduct exasperating. After dropping a motion to have Streicher examined by a psychiatrist, the lawyer reportedly conceded to the tribunal that his client was being “very difficult.”⁵⁴

Early in his captivity, the *LA Times* noted that while Streicher expected to hang, he also believed that the British and Americans would eventually come to accept the righteousness of both his words and deeds.⁵⁵ The 2 September edition of *The New York Times* also published a report similar to its counterpart on the West Coast. It appears that Streicher never wavered in his convictions. As the trial loomed closer, he proclaimed his conscience untroubled after being informed that a date for the opening proceedings had been set.⁵⁶ This apparent lack of remorse and already sordid reputation marked him as an object of scorn in the press during the trial progression. While neither *The Wall Street Journal* nor *The Washington Post* addressed Streicher’s pretrial conduct, *The Post* described him briefly as the publisher of *Der Sturmer*, *Gauleiter* of Franconia, and “a notorious Jew-baiter.”⁵⁷

⁵³ Associated Press, “INDICTED NAZI CHIEFS DISCUSS TRIAL IN CELLS,” *Chicago Daily Tribune*, 20 October 1945.

⁵⁴ McLaughlin, “AIM TO SPEED TRIAL, NAZIS’ COUNSEL SAY,” *The New York Times*, 14 November 1945.

⁵⁵ Richard R. Kasischke, “Half of Nazis Held For Trial Turn to Bible,” *Los Angeles Times*, 2 September 1945.

⁵⁶ Tucker, “Nazi Criminals Glad Test Near,” *Los Angeles Times*, 20 November 1945.

⁵⁷ Associated Press, “Goering Heads 24 Top Nazis Called to Trial,” *The Washington Post*, 30 August 1945.

It would be redundant to examine the pre-trial coverage of each of the other eighteen defendants as the five newspapers introduced them in relatively the same fashion. As noted above, the announcement of their selection on 30 August usually listed their general titles while foregoing any other background on the accused. The presence of four members of the *Wehrmacht* on the list prompted the speculative columnist Moley to suggest that each would utilize *respondeat superior* in his defense.⁵⁸ It appears that the columnist was unaware that the IMT's Charter had already forbade its usage.

If Moley was unfamiliar with the particulars of the charter, he was apparently not alone. In an editorial in the 19 October edition of *The New York Times*, the editorial's authors asked rhetorically if the four could plead *respondeat superior* due to the eventual horrors their profession facilitated. The editorial also questioned whether the military was as culpable as brutes like Streicher or *Reich* Commissar for the Netherlands Arthur Seyss-Inquart and whether the Allies should try the *Wehrmacht* alongside them, if at all.⁵⁹ Exactly one week later, the newspaper published a letter from one Henry Rheinstrom who responded to their query. Quoting similar precedent as that later cited by Robert Woetzel in his book, *The Nuremberg Trials in International Law*, Rheinstrom argued that Section 47 of the German Military Penal Code held the subordinate criminally responsible if he knew the order "concerned an act by which a civil or military crime was intended."⁶⁰ The exchange of information found on the op-ed page of *The New York Times* foreshadowed a debate that would recur throughout the trial. Over a year later, the

⁵⁸ Moley, "The First Twenty-Four."

⁵⁹ Editorial, "THE NAZI REGIME INDICTED," *The New York Times*, 19 October 1945.

⁶⁰ Henry Rheinstrom, letter to the editor, *The New York Times*, 26 October 1945.

rejection of this defense, the conviction of the four officers, and the sentences imposed upon them would incite discord among their American counterparts.

Of the four professional soldiers, the IMT indicted Field Marshal Wilhelm Keitel and Colonel General Alfred Jodl (identified incorrectly in *The New York Times* as Lieutenant Colonel) on all four counts. As Chief of the German High Command (*Oberkommando der Wehrmacht* or OKW), Keitel's primary duties were to convey Hitler's instructions to the rest of the *Wehrmacht*, thus taking responsibility for their dissemination, if not their actual origin. In addition, the indictment contended that in his role within the OKW, Keitel had also served in Hitler's secret cabinet. In regards to Jodl, the indictment held the Chief of the OKW's Operations Staff responsible for actualizing Hitler's orders, thus abetting in the commission of counts two, three, and four.⁶¹

The two veteran seamen, Grand Admirals Erich Raeder and Dönitz, each faced prosecution on all but count four, crimes against humanity.⁶² In the eyes of the IMT, Raeder's retirement in 1943 had not relieved the former Commander in Chief of the German Navy from responsibility. His advocacy of the invasion of Norway provided the foundation for his indictment on count two. Discussed in the following chapter, Raeder's rationale for the invasion placed the British in an uncomfortable position, as they too had been in the process of planning an invasion as a preventive measure. Likewise, the defense of his successor Dönitz against charges of war crimes while the latter served as commander of the U-boat arm of the German Navy presented the Anglo-Americans in an unfavorable light. Dönitz also had the unenviable position of being Hitler's political heir

⁶¹ Wire Report, "Text of Indictment of Major War Criminals Before the International Military Tribunal," *The New York Times*, 19 October 1945.

⁶² *Ibid.*

and, in reference to his brief term as Germany's president, received the derisive title "the five-day Führer" from the *Los Angeles Times*.⁶³

Of the remaining defendants, the IMT indicted eight others on all four counts. In addition to Seyss-Inquart who, along with his crimes against the Dutch, had also facilitated the *Anschluss* was von Neurath and the latter's successor as Hitler's Foreign Minister, Joachim von Ribbentrop. Alfred Rosenberg, Minister for the Eastern occupied territories and the NSDAP's philosopher; the urbane Albert Speer, Minister of Armaments and Munitions; Fritz Sauckel, Plenipotentiary for Labor and underling of Ley and Speer; *Reich* Minister of the Interior and Protector of Bohemia and Moravia, Wilhelm Frick; and Walter Funk, President of the *Reichsbank* rounded out this select group of defendants.⁶⁴ In the article cited above, *The Times* published the multiple titles each of the accused held; however, for the sake of brevity, this study includes only those most connected to the charges.

While *The Times* appeared less concerned with the personalities of what one might call the second-tier Nazis, on one occasion *The Post* provided a somewhat humorous account of von Ribbentrop prior to the trial. Having alluded to an earlier despondency that had previously gone unreported in the press, the article reported an improvement in the ex-diplomat's demeanor and noted a return to his former arrogance. The paper went on to recount a colorful *tête-à-tête* between the former foreign minister and a Czech interrogator. The latter, a Colonel Ecer, after tiring of von Ribbentrop's braggadocio, belittled his skills as both a diplomat and a champagne salesman (von Ribbentrop's

⁶³ United Press, "Allied Tribunal to Try 24 High-Ranking Nazis," *Los Angeles Times*, 30 August 1945.

⁶⁴ Wire Report, "Text of Indictment of Major War Criminals Before the International Military Tribunal," *The New York Times*, 19 October 1945.

former occupation).⁶⁵ While such an anecdote amounted to little more than frivolity, it reflected a press that often reveled in the derision of the men who had wrought such chaos. The exchange provided a touch of joviality and, perhaps, degradation in its treatment of the first Nuremberg trial, during which those who followed the events would be hard-pressed to find the former but the latter in multitudes.

Along with Bormann, the three defendants indicted on counts one, three, and four included Ernst Kaltenbrunner, Hans Frank, and Goebbels' alleged protégée, Fritzsche. In addition to being a general in the SS, the Austrian-born Kaltenbrunner had succeeded Reinhard Heydrich as chief of the *Reich* Main Security Office (the *Reichssicherheitshauptamt* or RSHA) following Heydrich's assassination in Prague. Kaltenbrunner's ascension placed him second only to Himmler within the multifarious RSHA, which encompassed portions of the SS, the SD, *Gestapo*, and other intelligence and police organization. With Himmler's suicide, it also made him a prime defendant as the Allies indicted him on count one for his role in the perpetration of the *Anschluss*, and counts three and four based on a range of atrocities attributed to the RSHA's various sections, including the deportation of individuals to the concentration camps.⁶⁶ Here the indictment published in *The New York Times* does not differentiate between those camps devoted to the extermination of its inmates, their detainment, or both. One would assume that the general implication included all three categories.

Kaltenbrunner's co-defendant Hans Frank faced damning evidence due in part to his role as Governor General of the occupied territories of Poland and his service within

⁶⁵ United Press, "Ribbentrop, Like Cornered Rat, May Expose British Traitors," *The Washington Post*, 25 September 1945.

⁶⁶ Wire Report, "Text of Indictment of Major War Criminals Before the International Military Tribunal," *The New York Times*, 19 October 1945.

several offices that administered Polish lands absorbed into the *Reich*.⁶⁷ Of the defendants, Frank displayed the first inklings of repentance. During the early months of his captivity, as reported in the *LA Times*, Frank devoted considerable time to Bible study and appeared, in the words of the prison commandant Colonel Burton Andrus, “very penitent.”⁶⁸

Despite being technically a journalist himself, the selection of Fritzsche attracted little attention among his American colleagues. A mouthpiece for the Third *Reich* over the radio waves and in print, Fritzsche’s offices included editor-in-chief of the *Deutsches Nachrichten Buero* (German news agency) and head of the *Reich* Ministry of Propaganda’s home press and wireless divisions. His role as an advocate of Nazi ideals, as well as encouraging both anti-Semitism and the lynching of downed Allied airmen, contributed to Fritzsche’s indictment on counts one, three, and four.⁶⁹ Until his acquittal, Fritzsche appeared almost as an afterthought in the press and seemed out of place among the other defendants sitting in the dock.

The youngest of the defendants at thirty-eight, Baldur von Schirach gained most of his notoriety as the *Reichsjugendführer* (youth leader) of the *Hitler-Jugend*, or Hitler Youth. Charged only with counts one and four, the indictment contended that, as the head of the *Hitler-Jugend*, von Schirach assisted in militarizing Germany’s youth. His indictment on count four stemmed from von Schirach’s supplemental role as *Gauleiter* of

⁶⁷ Ibid.

⁶⁸ Kasischke.

⁶⁹ Wire Report, “Text of Indictment of Major War Criminals Before the International Military Tribunal,” *The New York Times*, 19 October 1945.

Vienna, in which he had been culpable in deporting Viennese Jews to concentration camps.⁷⁰ Like Fritzsche, von Schirach received little attention in the press.

The final two defendants, Franz von Papen and Hjalmar Horace Greeley Schacht, faced indictment on counts one and two based on their roles in bringing the Nazis to power and in preparing Germany for war.⁷¹ A major discrepancy appears to exist, however, in the indictment's Appendix A, published in the 19 October edition of *The Times*, and the information reported in the *Tribune's* article of the same day. In listing the former vice-chancellor and ambassador von Papen's charges, the appendix erroneously maintained that he was charged with counts one, two "and the crimes against humanity set forth in Count Four of the indictment, including more particularly the exploitation and abuse of human beings for labor in the conduct of aggressive wars."⁷² However, Appendix A of the indictment, as cataloged in the Yale School of Law's Avalon Project, does not contain the passage quoted above. It includes only von Papen's indictment under counts one and two.⁷³ Based on the archive culled from the above source, in conjunction with the information published in the *Tribune*, as well as the secondary sources reviewed, it seems probable the quotation found in *The Times'* publication of the indictment represents a printing error. It duplicates exactly the last seven lines found in Speer's statement of individual responsibility printed below that of

⁷⁰ Ibid.

⁷¹ Associated Press, "24 INDICTED FOR PLOT AGAINST WORLD PEACE," *Chicago Daily Tribune*, 19 October 1945.

⁷² Wire Report, "Text of Indictment of Major War Criminals Before the International Military Tribunal," *The New York Times*, 19 October 1945.

⁷³ The Avalon Project, Yale School of Law, "From, *Indictment: Appendix A*," in *Nuremberg Trial Proceedings*, vol. 1, <http://avalon.law.yale.edu/imt/counta.asp> (accessed 26 May 2010).

Papen's on page thirteen. The information contained in Schacht's indictment, however, appears correct.

The Allies held that Schacht, as Funk's predecessor as president of the *Reichsbank*, had propagated Hitler's ascendancy to the chancellorship and aided in Germany's rearmament in preparation for war through his fiscal policies, a contention covered in *The Times*, *LA Times*, and the *Tribune*.⁷⁴ The *LA Times* noted that, unlike his fellow defendants, Schacht had not held any official posts since 1939 after Hitler replaced him at the *Reichsbank* with Funk. As it had with Raeder, Schacht's retirement did little to mollify the Allies' desire to see him prosecuted.⁷⁵ Unlike the grand admiral, Schacht had spent the last ten months of the war as a prisoner in several concentration camps after the 20 July 1944 attempt on the *Führer's* life, a fact that exacerbated his animosity towards his fellow defendants. *The New York Times*, *Los Angeles Times*, and the *Chicago Daily Tribune* each reported Schacht's imprisonment under the Nazis and his professed, yet vague, subversion of the Third *Reich*.⁷⁶

The three newspapers referred to in the preceding paragraph also noted Schacht's propensity for theatrics. Arrested by the United States Army after his liberation from a concentration camp in Tyrol, Austria, Schacht remained indignant during his detainment at Nuremberg and loudly proclaimed his innocence to jailer and inmate alike. Alternately mocking the Allies for propping the Weimer Republic up during its darkest days and threatening his co-defendants, Schacht found himself separated from the other prisoners

⁷⁴ Associated Press, "CHARGE SCHACHT ARMED NAZIS TO CONQUER WORLD," *Chicago Sunday Tribune*, 9 September 1945.

⁷⁵ Associated Press, "War Plan Held Schacht Crime," *Los Angeles Times*, 9 September 1945.

⁷⁶ Associated Press, "Allies Were 'Suckers' to Assist Pre-War *Reich*, Schacht Implies," *The New York Times*, 8 October 1945.

due to his outbursts.⁷⁷ The *Tribune* reported that, at one point, Schacht had compared Hitler and Göring to gangsters and that if the Americans would oblige him, he would “gladly shoot Göring . . . [and] kill him.”⁷⁸ Whether the banker’s disdain for his former colleagues was genuine, augmented by a belief that he had endured enough suffering, or simply a ploy designed to separate himself from the other defendants is inconsequential. It does provide proof that Kathleen McLaughlin’s prediction two months earlier was, in part, accurate and served as an indication of alliances among the defendants during the later stages of the trial.

In examining the American press’s depiction of the defendants, one should remember that the US was less than four months removed from Germany’s capitulation. To expect an unbiased representation of the accused would be to discount the emotionally charged atmosphere in which the press had worked the previous five years. Given the depravity and extent of Nazi “crimes” and the mayhem unleashed upon Europe by the *Wehrmacht*, the correspondents and managing staff of the five newspapers examined would be hard-pressed to suppress their own sentiments and treat the *Reich*’s agents as they would someone accused of a normal domestic crime. In this context, it is understandable that the tone of the coverage of the incidents, such as von Ribbentrop’s exchange with his interrogator or Streicher’s diatribes, cast the indicted in a poor light. The Trial of the Major War Criminals, as Raymond Moley pointed out, did subscribe to its own set of extraordinary circumstances.

⁷⁷ Associated Press, “ALLIES SUCKERS, WIZARD OF NAZI FINANCE SAYS,” *Los Angeles Times*, 8 October 1945.

⁷⁸ Associated Press, “ALLIES SUCKERS AFTER WAR NO. 1, SAYS SCHACHT,” *Chicago Daily Tribune*, 8 October 1945.

The five newspapers' coverage in the months leading up to the trial finds their descriptions of the indicted homogenous, indeed almost perfunctory. This should not strike the reader as unusual, as most of the reports published utilized the same wire services. Nor should the cavalier titles often flung about in the press such as "Nazi Philosopher" or "Jew-Baiter Number 1," bestowed on Rosenberg and Streicher respectively, surprise the reader. These monikers, like *The Times* and the *Tribune's* inability to differentiate between Göring's initial designation as the *Führer's* political heir and that of Hess as party leader, represent the intricate ties between party and state within the Third *Reich* and the bewilderment that it produced. As evident in *The Times's* 19 October printing of the indictment's statement of individual responsibility, one individual might hold multiple offices within both the *Reich* and the NSDAP. It appears then that the press ascribed these generalities to the defendants for the benefit of the casual reader.

Only in analysis or in examining the more curious incidents like the competency of Hess and Krupp or Ley's suicide did coverage show actual variance and did criticisms levied against the IMT begin to emerge. Whether it be the spectre of *ex post facto* raised by Ley and dismissed by Jackson, the culpability of the *Wehrmacht* deliberated on the editorial page of *The New York Times*, or discussion in Moley's column of what role *respondeat superior* should play, if any, in the trial, the perspectives presented in the newspapers began to sharpen. These deviations only widened as the trial progressed. So, too, would the space the papers devoted to covering the indicted and the frequency of those reports serve as a harbinger of their future attitudes toward the trial once it began. Such was the mood of the press as the defendants, now reduced to twenty-two including the absent Bormann, entered the dock on 20 November 1945.

CHAPTER THREE

MILESTONE, MOCKERY, OR MARATHON: PERSPECTIVES ON THE TRIAL

“If we fought against the forces of darkness and evil, we cannot subscribe to a peace that perpetuates injustice and creates a new world order equally as intolerable as the old, with the only distinction a new set of victims.”¹ – *Chicago Sunday Tribune* Editorial, 12 August 1945

As alluded to in the previous chapter, of the five newspapers selected for this study, none covered the Trial of the Major War Criminals more extensively than *The New York Times*. As such, in examining the publications’ treatment of the trial itself it would be best to begin with the premier newspaper of the Empire City. In doing so, not only does this provide a rudimentary timeline for readers unfamiliar with the haphazard order of the trial, it presents a standard by which to compare and contrast the other four newspapers’ coverage.

The New York Times

Even during the London Conference, *The Times* provided its readers with varying perspectives on the issues surrounding the prospective trial. Quoting liberally from a *St. Louis Post-Dispatch* editorial, *The Times* reported that a substantial number of American and British commanders, including Eisenhower and Montgomery, favored the lenient treatment of the German General Staff. The article noted that the St. Louis newspaper adamantly opposed such clemency and expressed apprehension that a delay in finalizing an agreement between the four powers would result in a loss of public support for the trial and, consequently, allow war criminals to escape prosecution.² Although it would later address the inclusion of the German General Staff and High Command in the indictment on its editorial page, in this article *The Times* remained neutral in its position.

¹ Editorial, “WHAT THEY FORGOT,” *Chicago Sunday Tribune*, 12 August 1945.

² Unknown, “WAR TRIAL FIASCO FEARED IN DELAYS,” *The New York Times*, 6 August 1945.

A day after the trial commenced, in its edition of 21 November, *The Times* reported that the first day of the trial was devoted solely to the reading of the indictments, which the newspaper had printed in full on 19 October. The paper presented a detailed account of the proceedings inside the Palace of Justice. Correspondent Kathleen McLaughlin provided her readers with observations on the courtroom's design, the conduct of the defendants, and, unlike the other four newspapers, noted the absence of Jackson's counterparts: Francois de Menthon, Sir Hartley Shawcross of Great Britain, and the Soviet Union's Roman Rudenko.³

The following day, Thursday, 22 November, articles covering the activities of day two, including the entry of the defendants' pleas, excerpts from Justice Jackson's address to the tribunal, and a motion challenging the legitimacy of the tribunal filed by the defense dominated the first three pages of *The New York Times*.⁴ The excerpts from Jackson's address took up the newspaper's entire second page and in them he emphasized that the tribunal was not motivated by vengeance, but by justice and the desire to prevent future war. He then outlined the charges brought against the defendants, explained how the conspiracy charge related to the commission of the other three counts, and declared that the defendants own documents would provide ample proof of their guilt. In closing, Justice Jackson recognized the defense would likely challenge the legality of the tribunal and some of the charges, but defended its charter by noting that it represented the desires of humanity.⁵

³ McLaughlin, "ALLIES OPEN TRIAL OF 20 TOP GERMANS FOR CRIMES OF WAR," *The New York Times*, 21 November 1945.

⁴ Various, *The New York Times*, 22 November 1945.

⁵ Associated Press, "Excerpts From Justice Jackson's Opening Address to War-Crimes Tribunal," *The New York Times*, 22 November 1945.

The motion entered on behalf of the entire defense by Göring's attorney, Dr. Otto Stahmer, fulfilled Jackson's prediction that the defense would challenge the tribunal's authority. In it, Dr. Stahmer argued that count two was *ex post facto* as was its application towards individuals for crimes of the state. Trying the defendants would then violate *Nulla poena sine lege* (no penalty without a law), a fundamental legal principle of western law. The attorney concluded by asking the tribunal to solicit opinions from recognized experts on international law regarding the legality of the trial.⁶ The tribunal denied the motion without comment.

In its 22 November edition *The Times* published statements from Göring and Rosenberg, becoming the only newspaper to print both in their entirety. The tribunal had forbidden the men from reading from them when they had entered their pleas, lest the Nazis use the trial as a medium for their propaganda. While Göring denied that his actions had constituted criminal activity, he took responsibility for them but only to the German people. The tribunal, he argued, held no jurisdiction over him.⁷ Like Göring, Rosenberg implied a readiness to accept responsibility for his actions if the prosecution could prove his guilt, which he did not concede.⁸

Over the next few days, articles detailing the American prosecutors' presentation of evidence landed on the front page of *The Times*. In what would become a feature during the first two months of the trial, the newspaper published a summary of the week's activities in Section E of its Sunday edition. The first summary, written by Kathleen McLaughlin, marveled at the speed with which the Allies were conducting the trial. The

⁶ United Press, "TEXT OF MOTION BY NAZI DEFENSE," *The New York Times*, 22 November 1945.

⁷ Wireless Report, "GOERING'S STATEMENT," *The New York Times*, 22 November 1945.

⁸ Wireless Report, "ROSENBERG'S STATEMENT," *The New York Times*, 22 November 1945.

only impediment to a quick conclusion, the author observed, would be the defense, as the attorneys were unfamiliar with some of the foreign elements of the procedures. In such cases, McLaughlin reasoned, the tribunal had to temper alacrity with fairness.⁹ In addition, the same section contained caricatures of the defendants seating in the dock. The first, located next to McLaughlin's summary, was of the hooded personification of death pointing an accusing finger at Göring, Hess, Keitel, and several other indistinguishable figures. Below the image, the caption read, "One witness is enough."¹⁰ The second caricature, entitled "The Silent Jury," featured a seated Göring confronted by apparitions representing the victims of the Final Solution.¹¹ Both illustrations reflected the grimness of the proceedings.

While *The Times* limited its coverage to the events occurring inside the Palace of Justice during the trial's first week, the newspaper did not remain silent on the issues surrounding the proceedings for long. The following Monday, it reported that some officers in the United States Army, particularly those stationed in Europe, were wary of the trial. In short, the officers opposed both the idea of collective responsibility and the indictment of the German General Staff and High Command.¹² In turn, the newspaper reported that an irate Jackson had refuted these attacks in response to an article found in the *Army-Navy Journal* (now known as the *Armed Forces Journal*) which contained similar sentiments. Reprinted in *Stars and Stripes*, the journal article had alleged that the

⁹ McLaughlin, "WAR CRIMES TRIALS PROCEED AT FAST PACE," *The New York Times*, Section E, 25 November 1945.

¹⁰ Alois Derso and Emery Kelen, "At Nuremberg," *The New York Times*, Section E, 25 November 1945.

¹¹ Unknown, "The Silent Jury," *The New York Times*, Section E, 25 November 1945.

¹² Frank E. Mason, "ARMY CALLED FOE OF JACKSON VIEWS," *The New York Times*, 26 November 1945.

indictment of the German General Staff and High Command as an organization discredited the military profession and would be detrimental to American officers seeking higher rank. *The New York Times* reported that Jackson had dismissed the article as factually inaccurate and noted that the Allies had indicted the German General Staff and High Command, Keitel, and his cohorts “not for fighting the war, but for promoting it.”¹³

The conspiracy case received almost daily attention in *The New York Times*. Although most reports contained a recitation of the evidence presented the previous day (citing heavily from the defendants own documents, journals, etc.) and the points argued by Jackson and the other members of the American team, occasionally one of the newspaper’s own correspondents would interject his own opinion. In reviewing the roles played by von Ribbentrop, Seyss-Inquart and others in the absorption of territories into the *Reich*, war correspondent Raymond Daniell declared that, regardless of the final verdict, the regime the defendants represented was assuredly guilty. However, Daniell alluded to the guilt of other nations in allowing Germany to rearm and he bemoaned the tribunal’s refusal to hear instances of such impotency. While legally immaterial to the case against the Nazi regime, the reporter admitted, the inclusion of such information in the trial record would frame the proceedings in the proper historical perspective.¹⁴ Weeks later, in mid-December, as the conspiracy phase of the trial shifted from the individual defendants to the organizations themselves, the dispute between Jackson and members of the US military over the *Wehrmacht* officials’ culpability resurfaced, prompting Daniell to characterize it as a misunderstanding. Supportive of Jackson, he

¹³ Associated Press, “JACKSON SCOLDS CRITICS OF TRIAL,” *The New York Times*, 5 December 1945.

¹⁴ Raymond Daniell, “Nazis and the Nazi System Trapped at Nuremberg,” *The New York Times*, 9 December 1945.

asserted that the prosecution had proven its case against Keitel, Jodl, Raeder, and Dönitz already.¹⁵

On 20 December, in the middle of Colonel Robert Storey's prosecution of the Gestapo, the tribunal recessed for the holidays. During the break, *The Times* published several trifling features about the defendants' activities during the lull in the trial. One article that was decidedly not trivial reported that the army's American Information Control Division had conducted a poll among German citizens concerning the trial. Its findings revealed that a majority of Germans had little interest in the trial or the precedents it might set, although eighty percent of those polled believed the defendants were guilty. Of those who did follow the trial, the poll found that a third opposed the group indictments. Some disliked the idea of foreigners judging German nationals while others observed that the Allies did not include in the particulars of the indictment the bombing of London by the *Luftwaffe*. By its omission, the respondents construed that the prosecution did not want to provide the defendants with an opportunity to use *tu quoque* in their defense. Citing various sources, the paper concluded that most Germans placed greater concern on coal shortages and other economic issues than on the proceedings in Nuremberg.¹⁶

When the trial resumed on 2 January, *The Times* continued in its daily coverage even though, with some exceptions, it no longer published articles concerning the proceedings

¹⁵ Daniell, "WAR CRIMES TRIAL TURNS TO GROUPS," *The New York Times*, 17 December 1945.

¹⁶ Wireless Report, "WAR-CRIMES TRIAL DULL TO GERMANS," *The New York Times*, 2 January 1946.

*Author's note: While not mentioned in the article, mere survival was Germany's foremost concern as during the first year of occupation, Germans on average subsisted on 1,200 calories per day and the mortality rate of adults was four times that of pre-war levels. The mortality rate of children was ten times that of pre-war levels. As a result, an estimated one to two million Germans died from malnutrition during the Allied occupation.

on its the front page. However, it continued to address the issues surrounding the indictment of the *Wehrmacht* officials. Although relegated to page ten of the 8 January edition, the conspiracy case against the General Staff and High Command received considerable attention in the newspaper, including the printing of the full text of Taylor's summation. In it, Colonel Taylor argued that the general staff had ventured beyond its traditional role by facilitating Hitler's rise to power and pushing Germany towards war.¹⁷ Adding to the documentary evidence submitted by Taylor was the damning testimony of German General Erich von dem Bach-Zelewski who declared that the general staff had participated in ethnic cleansing on the Eastern Front when it had authorized the slaughter of partisans at Himmler's request.¹⁸

After the completion of the American and British phase, fewer articles in *The Times* dealt with the controversial aspects of the trial as most accepted that the foundations of counts three and four were legally sound. This is not to say the newspaper focused any less attention on the French and Soviet presentations, but rather the reports do not reveal any personal bias. However, during the opening of the Soviet phase of the trial, *The Times* published an article in which it reported that various functionaries within the United States government supported the trial, refuting several of the most common attacks against it. Addressing the issue of individual responsibility, Assistant Solicitor General Harold Judson argued that, following the Great War, an Allied commission on war crimes had ruled "that even chiefs of state were liable to criminal prosecution."¹⁹

¹⁷ Wireless Report, "Text of Summation Accusing German Generals," *The New York Times*, 8 January 1946.

¹⁸ Daniell, "GERMAN GENERAL CITES ARMY CRIMES," *The New York Times*, 8 January 1946.

¹⁹ Unknown, "U.S. AIDES UPHOLD NUREMBERG TRIAL," *The New York Times*, 10 February 1946.

Furthermore, he contended the trial demonstrated democratic justice. The report noted that Francis Russell, the acting director for the State Department's Office of Public Information, echoed Judson's comments, declaring that the trial was "building the legal foundations of peace."²⁰

During the trial's defense phase, *The New York Times* presented the prosecutions' performance in glowing terms. As Göring opened his defense, the newspaper published an article that quoted Justice Jackson exclusively. In it, Jackson promoted the trial, noting the historic implications that surrounded it, and declared that the four powers were working well together despite their divergent legal systems.²¹ Weeks later, the justice's famous exchange with Göring on 18 March, generally accepted as a low point for the prosecution, garnered little attention in the newspaper. In reporting that day's activities, correspondent Raymond Daniell noted only that the former *Reichsmarschall* proved to be a difficult witness and that the tribunal had overruled Jackson when he asked that Göring limit his responses to the affirmative or negative.²² In truth, Jackson's request stemmed from his own frustration with the direction of the cross-examination. The prosecutor's open-ended questions allowed Göring to expound on the virtues of National Socialism and ridicule Jackson for some of the more obvious questions posed to him. When the prosecution's cross-examination of Göring ended several days later, Daniell depicted Jackson as having been victorious, although he also credited British assistant prosecutor

²⁰ Ibid.

²¹ C.L. Sulzberger, "JACKSON STRESSES ALLIES' TRIAL UNITY," *The New York Times*, 10 March 1946.

²² Daniell, "Goering Says he Denied Defeat Until Ardennes Drive Collapsed," *The New York Times*, 19 March 1946.

Sir David Maxwell-Fyfe for forcing Göring to admit that he had ordered the execution of captured British aviators after they had attempted to escape.²³

Following Göring's turn on the stand, some followers of the proceedings characterized the tribunal's treatment of the defendants as too lenient. *The Times* reported that Martin Popper, secretary of the National Lawyers Guild, adopted this stance. Popper observed that the tribunal's behavior was due likely to its desire to provide the defendants with a fair trial. While laudable, he continued, this allowed the defendants and their attorneys a forum in which to defend Nazism. The sentiments allegedly held by the defense counsel, Popper argued, were indicative of the depths of Nazism in German society. Popper concluded by praising Jackson for his role in constructing the tribunal and suggested that the prosecution's next target be the German industrialists.²⁴ Popper's critique of the accuseds' performance foreshadowed other tactics used in their defense.

During Rudolf Hess's defense, the newspaper reported that his attorney, Dr. Alfred Seidl, had offered evidence that the Molotov-Ribbentrop Pact, purportedly a treaty of nonaggression, contained a secret agreement that gave the Soviet Union *carte blanche* in the eastern half of Poland and the Baltic states. The article's author reported that Soviet Prosecutor Rudenko had objected to the submission and the tribunal had ruled that the defense had to translate its affidavit from the *Reich* Foreign Office Chief Frederick Gaus (spelled "Gauss" in Daniell's article) before they would consider its admissibility.²⁵

²³ Daniell, "JACKSON SUBDUES GOERING ON STAND," *The New York Times*, 21 March 1946.

²⁴ Wire Report, "Nuremberg Defense Seen Preaching Nazism; Observer Says Court `Leans Over Backward,'" *The New York Times*, 1 April 1946.

²⁵ Daniell, "RUSSIAN WARDS OFF HESS STORY OF PACT," *The New York Times*, 26 March 1946.

During von Ribbentrop's defense, the former foreign minister also referred to this agreement calling on his former secretary, Marguerite Blank, to confirm its existence.²⁶ In the article, the newspaper speculated that, by referring to the agreement, Ribbentrop's defense had hoped to cause dissension among the Allies. Although *The Times* never reported it, the tribunal did allow the reading of the Gaus affidavit and entered it into the official record on 1 April. However, it did report on additional testimony by Baron Ernst von Weizsäcker, a former foreign office secretary who confirmed the existence of the secret agreement.²⁷ While none of the articles reported that Hess, Ribbentrop, or their witnesses accused the Soviet Union of conducting itself in the same fashion as Germany had, the implication was clear.

In late May, during Raeder's defense, his attorney, Walter Siemers, also raised the issue of *tu quoque*. Responding to the charge that, in their capacity as commander of the German Navy, Raeder and Dönitz had authorized unrestricted submarine warfare, Siemers introduced an affidavit signed by Admiral Chester W. Nimitz. *The Times* reported that the affidavit detailed the methods used by American submarines in the Pacific. Using the affidavit, Siemers argued that Germany's conduct with respect to submarine warfare was consistent with that of the United States.²⁸ Later, the newspaper reported that, under cross-examination for his role in distributing Hitler's "commando order," Jodl had suggested that the Allies had committed similar atrocities.²⁹

²⁶ Daniell, "RIBBENTROP SAW HITLER AS 'A SAVIOR,'" *The New York Times*, 27 March 1946.

²⁷ United Press, "ACCORD ON SPOILS CITED BY GERMAN," *The New York Times*, 22 May 1946.

²⁸ United Press, "NIMITZ EXPLAINS SUBMARINE ORDER," *The New York Times*, 24 May 1946.

²⁹ Associated Press, "JODL HINTS ALLIES SHARED ATROCITIES," *The New York Times*, 7 June 1946.

As May turned to June and the individual defenses continued, *The New York Times* published another article that contained praise for the trial. Willis Smith, the president of the American Bar Association (ABA), speaking before the New York chapter, declared that the trial had the full support of the ABA. In his remarks, Smith asserted that most countries, including Germany, recognized as criminal the charges presented at Nuremberg. Referring to the legality of count two, Smith contended that the Kellogg-Briand Pact had provided for its foundation.³⁰

Harkening back to Jodl's allegations, beginning on 2 July *The Times* published several articles describing the defense's objection to the Soviet allegation that German soldiers had massacred 11,000 Polish nationals in the Katyn Forest. The newspaper reported that German Colonel Friedrich Ahrens had testified that a commission comprised of members of Axis satellite states investigating the massacre had determined it had occurred no later than the spring of 1940 while Soviet forces still occupied the eastern half of Poland. The article stated further that the commission had based its findings on interviews with the local populace, examinations of the bodies, and various documents found with them.³¹ The following day, another article noted that the Soviet prosecutors had presented a former member of the commission, M.A. Markov, who cast doubt on the validity of Ahrens testimony. Markov, a Bulgarian, testified that the commission had reached its conclusion under duress due to the abnormal presence of *Wehrmacht* personnel. Markov also testified that the commission consisted entirely of

³⁰ Unknown, "BAR PRESIDENT HAILS TRIALS IN NUREMBERG," *The New York Times*, 21 June 1946.

³¹ United Press, "KATYN FOREST ISSUE REVIVED BY GERMANS," *The New York Times*, 2 July 1946.

“members from other satellite countries.”³² The article did not refer to Bulgaria itself being in the Soviet sphere of influence.

Over the next month, *The Times*' coverage of the trial lessened somewhat as the defense summations began, followed by those of the prosecution. Although the organizations' defense had yet to begin, observers of the trial could see its conclusion and many were pleased with its potential outcome. In the newspaper's 10 July edition, a consultant to the American prosecution team, Dr. Edmund A. Walsh, marveled at the quantity of captured documents the prosecution had entered on its behalf, observing that “[t]he German passion for writing things down in great detail operated this time for humanity.”³³ Serving as both the vice-president of Georgetown University and regent of its School of Foreign Service, Walsh, a Jesuit priest, also commended Jackson for his performance during the trial, noting that his presentations would “rank with the great state papers of American history.”³⁴

Jackson's summation of the conspiracy case against the defendants began on 26 July and the following day news of the speech found its way onto the front page of *The Times*. In the article, continued on page five, Jackson alleged that, while the defendants had encouraged Hitler and provided him with the tools in which to pursue his aims, none tried to stop Hitler, despite their later protests to the contrary. After Jackson had finished, the article mentioned, British prosecutor Shawcross began his summary of the aggressive war

³² Associated Press, “GERMANS FORCED KATYIN TESTIMONY,” *The New York Times*, 3 July 1946.

³³ Unknown, “Jackson Lauded at Nuremberg,” *The New York Times*, 10 July 1946.

³⁴ *Ibid.*

case.³⁵ In addition, *The Times* printed excerpts from Jackson's summation on page five. In it, Jackson rebuked the defendants' challenges to the trial and asked the tribunal to ignore the conditions that led to the rise of Nazism (referring to the defendants' usage of the threat of communism and the humiliation inflicted by the Treaty of Versailles in justifying their actions). He asked that they focus instead on the crimes committed by the accused, many for material rather than ideological gain. Singling out Göring, Jackson described the former fighter ace as a "half militarist and half gangster. . . . [who] stuck a pudgy finger in every pie."³⁶

Until the announcement of the verdicts in late September, articles pertaining to the defense of the indicted organizations, the final pleas of the defendants, and both parties' closing statements did not generate any new issues or reveal any additional bias in the reporting of *The Times*. However, the newspaper's predisposition towards the trial had been evident since its inception the previous August. Yet this was not the blind support of a zealot wedded to the tribunal's precepts regardless of their foundation. The positions endorsed by *The New York Times* were as complicated as the issues it had reported on.

On its editorial page, *The New York Times* remained firm in its support of the IMT but, as the newspaper generally had in its reporting, tempered that support by acknowledging its flaws before and during the trial. For example, in its 9 August edition, the paper fully acknowledged that the prosecution of the Axis leaders under count two would be *ex post facto*. Nonetheless, the editorial contended that, at some point, the international community must establish a standard and the offenses of the Third *Reich* were so egregious that few could argue that they should go unpunished. If critics called it

³⁵ Associated Press, "JACKSON PINS GUILT OF HITLER FOR WAR ON HIS NAZI CHIEFS," *The New York Times*, 27 July 1946.

³⁶ Associated Press, "Excerpts of Jackson's War Guilt Summary," *The New York Times*, 27 July 1946.

victors' justice, then so be it. As the creation of the IMT represented a bold innovation in international law, *The Times* admitted there existed potential for abuse. To prevent such misuse, the paper argued, the fairness of the trial had to be beyond reproach, lest it alienate the world at large and set a dangerous precedent for future trials.³⁷

The paper reaffirmed its stance in another editorial published in October. Responding to allegations that the trial represented victor's justice, the newspaper conceded that without the Allied victory the establishment of the tribunal would not have been possible and, as such, the trial was inherently political. However, it warned again that the public would reject the legitimacy of the proceedings if it believed that the defendants' guilt stemmed only from having lost the war, rather than from their role in committing one or more of the crimes levied against them. In addition, the editorial argued that, with respect to the newly created United Nations' role as a global peacekeeper, the tribunal should determine for future reference, albeit cautiously, under what conditions a nation could legitimately go to war and what constituted aggressive war.³⁸

The Times published a third editorial to coincide with the release of IMT's official indictment on 19 October. While offering a reaffirmation of the paper's early position favoring the trial, it confirmed that, after an examination of the charges laid out in the indictment, any verdicts the tribunal rendered would meet humanity's approval. Yet, in its language, *The Times* drifted away from the analytical tone of its earlier editorials. As addressed in chapter two, the editorial questioned the degree of guilt possessed by Keitel and the other *Wehrmacht* officers named in the indictment compared to that of Göring and his ilk. In doing so, the editorial referred to several defendants as butchers and stated

³⁷ Editorial, "THE WAR CRIMINAL TRIALS," *The New York Times*, 9 August 1945.

³⁸ Editorial, "THE COMING WAR TRIALS," *The New York Times*, 9 October 1945.

clearly that none of the defendants deserved the presumption of innocence fundamental to Anglo-Saxon legal traditions, as their crimes had been so hideous and notorious.³⁹

On 21 November, one day after the trial began, *The Times* recognized the tribunal's uniqueness as it had in previous editorials, but provided rationalization for its creation yet unseen on its pages. The seminal newspaper's editorial cited the evolution of English Common Law and its inherent pragmatic nature, a rationale once argued inside the war department during the development of the Bernays Plan. Invoking the triumphs once held in ancient Rome, the editorial advised its readers that, while assured in the guilt of the accused and the penalty they would ultimately pay, the tribunal had to conduct itself with fairness and treat those in the dock as individuals rather than vanquished barbarians of antiquity. It warned that failure to do so would result in unscrupulous nations using the precedents set forth by the trial as justification for their malevolence in the future.⁴⁰ While cosmetically different, this continued a pattern established several months earlier in which *The Times* tempered its support for the trial with its recognition of the risk that might arise from abusing the principles established by the trial. However, in the opinion of the Gotham standard-bearer, the rewards gained from the tribunal's formation overshadowed its potential shortcomings. Several days later, *The Times* repeated this statement but predicted that such idealism would flourish only if "the nations now sitting in judgment live up to the stern code by which they, as victors, condemn[ed] the vanquished."⁴¹

³⁹ Editorial, "THE NAZI REGIME INDICTED," *The New York Times*, 19 October 1945.

⁴⁰ Editorial, "THE NUREMBERG TRIAL," *The New York Times*, 21 November 1945.

⁴¹ Editorial, "THE ISSUES AT NUREMBERG," *The New York Times*, 25 November 1945.

Once the trial was under way, the editorials published in the newspaper did little to detract from its view that the trial would prove beneficial to humanity. This is not to say that *The Times* ignored challenges to its basic position. Quite the contrary, for on 6 December the paper's editors chastised Justice Jackson for the offhanded fashion in which he had dismissed the accusations made in the *Army and Navy Journal* that the indictment of the German General Staff and High Command would discredit the military profession and deter American officers from seeking high rank. The editorial surmised that the inclusion of the military in the indictment weakened the prosecution's case because of its implication of the collective guilt of a legal organization. In closing, the editorial reminded its readers that the prosecution and tribunal served in different capacities and that Jackson's views did not necessarily represent those held by the court.⁴²

However, in March, when the prosecution concluded its case against the individual defendants, the newspaper was noticeably silent regarding its earlier denunciation of the German General Staff and High Command's inclusion in the indictment. Rather, an editorial cited the damning evidence of the *Reich's* crimes and noted that such atrocities would not have been possible without the willing subordinates found within all six of the indicted organizations. Furthermore, the editorial declared that the conviction of the various organizations, including the German General Staff and High Command, would streamline future trials and ensure the prosecution of secondary leaders guilty of similar crimes.⁴³

⁴² Editorial, "THE LAW AT NUREMBERG," *The New York Times*, 6 December 1945.

⁴³ Editorial, "THE PROSECUTION RESTS," *The New York Times*, 1 March 1946.

With some minor exceptions, the editorial page of *The New York Times* offered little in the way of commentary until the prosecution's closing statements made in late July 1946. In its 27 July edition, the newspaper lamented that attention towards the trial had waned due to its own excessive duration and the emergence of other pressing global issues. However, it argued that the havoc wreaked by the Nazi war machine lay at the root of many of the world's current problems and that the lengthiness of the trial reflected the tribunal's efforts to document the accuseds' crimes thoroughly. In conclusion, the editorial predicted that the verdicts would likely be as just as the trial had been fair given that the defendants had received, quoting Britain's chief prosecutor Sir Hartley Shawcross, "the kind of trial . . . they never gave to any man."⁴⁴

In September, as the members of the tribunal deliberated on the fate of the defendants, *The Times* published two more editorials praising the trial's fairness and its benefits for humanity. The first repeated the opinion voiced in the editorial of 27 July that the trial's length stemmed from the prosecution's thoroughness in documenting the evidence and the tribunal's consideration for the defense. In addition, the editorial rejoiced at the prospect that the tribunal's verdict would establish the illegality of aggressive war based on "historic and irrefutable evidence."⁴⁵ The second editorial, published the day before the tribunal issued its first verdicts, echoed the sentiments of the former and argued that further significance lay in the fact that the Allied prosecution had acted in complete harmony during the trial's duration adding more weight to its historical importance.⁴⁶

⁴⁴ Editorial, "NUREMBERG," *The New York Times*, 27 July 1946.

⁴⁵ Editorial, "LAST ACT AT NUREMBERG," *The New York Times*, 1 September 1946.

⁴⁶ Editorial, "DECISION AT NUREMBERG," *The New York Times*, 29 September 1946.

Over the course of the trial, *The New York Times*' editorial page heard from other voices regarding the IMT and the issues presented by the proceedings. After the prosecution showed the tribunal a film on 29 November detailing the horrors of the Third *Reich*, another of the newspaper's foreign correspondents recounted what she had witnessed during the screening. In her opinion piece, Anne O'Hare McCormick described the defendants' reactions to the footage: shame, regret, indifference, and, in the case of Göring, interest. Their responses prompted the author to lament that there were not more Germans in attendance during the viewing, observing that the trial was receiving more attention in New York than in Nuremberg itself. To rectify this, McCormick proposed that the Allies do more to publicize the trial among Germany's own citizenry, thus raising Germans' awareness of the crimes committed by their former leaders against both the *Reich* and the world at large. She concluded, as had the newspaper, that a failure to do so would lessen the trial's intended effects.⁴⁷

While *The Times* supported the international court, opinions differed among its readers. That the newspaper would publish letters critical of its position, such as the Rheinstrom letter mentioned in the previous chapter, reinforces the earlier contention that it strove to present an evenhanded chronicle of the events occurring at Nuremberg, rather than just disseminate propaganda in favor of the tribunal. While often repetitive, many of the letters offer unique perspectives on the trial, deriving perhaps from their authors' occupations, gender, or the nature of the arguments presented.

For example, one letter published in early August 1945 was cautious in its support for the trial. The author, retired Judge Paul Thatcher of Ogden, Utah, echoed the arguments against establishing the tribunal, including charging individuals for violations of the

⁴⁷ Anne O'Hare McCormick, "Germany Little Interested in Trial of War Criminals," *The New York Times*, 1 December 1945.

state, the tentative basis by which the Kellogg-Briand Pact served as precedent for count two, and the treaty's lack of a punitive clause for those who violated it. However, Thatcher did assert, as *The Times* would periodically, that despite its potential for abuse, the tribunal offered the best chance for establishing "world justice and peace."⁴⁸

Countering the position of Thatcher and *The Times*, a former judge advocate and intelligence officer in the 82nd Airborne, Karl Price, asserted that, even if the Kellogg-Briand Pact had made war an international crime, it contained no provisions for punishing the individual leaders of the aggressor state. In addition to the "crimes" being applied retroactively, the author argued that punishing the leaders of a defeated nation, aggressor or not, set a dangerous precedent despite the noblest intentions of the IMT. Price claimed that victorious nations would never allow the prosecution of their own leaders for engaging in wars of aggression and rightly pointed out that the Allies did not prosecute one of their own for violating the Kellogg-Briand Pact. Invoking an argument also found in the editorials of the *Chicago Daily Tribune*, Price noted that the Soviet Union had invaded Finland, Poland, and the Baltic states even though the communist monolith had also been a signatory to the treaty. Furthermore, he argued that, fearful of postwar prosecution, nations would cast aside the rules of conventional warfare resulting in greater atrocities. Price concluded that the discrepancy in its application and the restraints the criminalization of aggressive war would place on international relations, both peaceful and bellicose, Price concluded, would render the precedents created by the trial impotent before they were even established.⁴⁹

⁴⁸ Paul Thatcher, letter to the editor, *The New York Times*, 5 August 1945.

⁴⁹ Karl Price, letter to the editor, *The New York Times*, 18 November 1945.

While male readers generated most of the letters published in *The Times*, its female readers contributed to the debate as well. In response to the newspaper's 6 December chastisement of Jackson over the indictment of the German General Staff and High Command, Miriam Stuart, who identified herself as the executive secretary of the Society for the Prevention of World War III, emphasized that the indicted organization's representatives faced prosecution for their conduct and not because of their chosen profession. Passionate in her phrasing, Stuart seems shortsighted and legalistically obtuse in two aspects of her letter. Both aspects echo Jackson's confidence in that they declare that American soldiers need not fear similar repercussions and that the accused were guilty "by every standard of law and morality, Anglo-Saxon or otherwise."⁵⁰

As the trial progressed, the public's interest in the Trial of the Major War Criminals seems to have waned, as letters concerning the proceedings did not appear in print again until June. During the defense phase of the trial, *The Times* published a letter unusual in that, unlike those discussed previously, it mirrored the newspaper's equitable treatment of the proceedings. Serving as both the secretary of the American Society of International Law and the editor of the *American Journal of International Law*, legal scholar Pitman Potter argued that, while the tribunal's treatment of the accused during the course of the trial had been exemplary, the IMT's deficiency lay within its composition. He questioned the Allies' declaration that the scope of the war made the selection of judges from neutral countries nigh impossible. That the IMT consisted of Germany's conquerors, Potter continued, tainted the proceedings in the eyes of Germans regardless of the tribunal's actual conduct. Conceding willingly the validity of count three and the denial of *respondeat superior* as a primary defense, Potter asserted that prosecution under

⁵⁰ Miriam Stuart, letter to the editor, *The New York Times*, 15 December 1945.

the other three counts was indeed retroactive, as was the contention that individuals were accountable for the actions of the state. He suggested that it would have been better had the Allies charged the accused only under count three. Given that the circumstances made such a limited prosecution impractical, Potter suggested that the global community recognize the tribunal as an aberration in international criminal law, albeit a noble one, rather than an innovation establishing precedent.⁵¹

Potter's examination of the tribunal's legality and potential legacy generated a response significant for its source rather than its content. Its author, Lord Robert Wright, the chair of the United Nations War Crimes Commission, justified the legal foundation of the four counts by citing the Kellogg-Briand Pact (referred to as the Pact of Paris in his letter) and the Hague and Geneva Conventions, just as Jackson and the other architects had during the drafting of the London Charter. In a circular argument, Lord Wright contended that counts two and four were not *ex post facto* because the IMT's charter had declared them to be in accordance with international law created by the agreements listed above. He did not address whether the Kellogg-Briand Pact and latter two treaties actually had done so.⁵² With one exception, a letter contradicting Justice Jackson by asserting that Germany's preparation for aggressive war had predated the Nazi regime, *The New York Times* did not publish any more correspondence from its readers concerning the trial until October after the tribunal had issued its verdicts.

The Washington Post

Further down the eastern seaboard, *The Washington Post* reported on the Trial of the Major War Criminals with slightly less zeal. The newspaper cobbled together most of its

⁵¹ Pitman Potter, letter to the editor, *The New York Times*, 2 June 1946.

⁵² Lord Robert Wright, letter to the editor, *The New York Times*, 30 June 1946.

articles from wire services, so that many lacked the detail or perspective found in *The Times*. Often *The Post's* reporting of the trial was similar to that of *The Times*, such as the paper's account of the trial's commencement. Although *The Post's* article made no mention of the absent prosecutors, it did describe the seating arrangement of the defendants and their appearance, using derogatory terms to describe Göring, Funk, and Schacht.⁵³ The following day, in its edition of 22 November, the newspaper also printed the same excerpts from Justice Jackson's address as those found in *The Times*.⁵⁴ Also diverging from the New York newspaper in its coverage, while another article recapping the day's events referred to the motion filed by the defense questioning the legal standing of the tribunal, *The Post* did not publish the actual motion nor did it publish the statements of Göring and Rosenberg.⁵⁵

Unlike *The Times*, *The Post* seldom published articles that indicated approval or disapproval of the prosecution's performance or the tribunal itself. However, one early exception occurred just prior to the holiday recess. The newspaper reported that the tribunal had admonished the American prosecutors during their presentation of evidence against the Nazi leadership corps and the *Reich* Cabinet. The article noted that the tribunal had questioned the extent to which the subordinate levels of the Nazi leadership (assumedly the *Ortsgruppenleiter*s and lower) knew about the alleged conspiracy. Concerning the evidence presented against the *Reich* Cabinet, the tribunal president, Sir Geoffrey Lawrence, found it to be redundant while Francis Biddle, the American

⁵³ Associated Press, "20 Top Nazis Hear 5-Hour Recital Of Their Crimes as Trial Opens," *The Washington Post*, 21 November 1945.

⁵⁴ Unknown, "Partial Text of Jackson's Address at War Crimes Trial," *The Washington Post*, 22 November 1945.

⁵⁵ Associated Press, "20 Top Nazis Lose in Move To Halt Trial As It Opens," *The Washington Post*, 22 November 1945.

representative on the tribunal, remarked that the information presented did not prove criminality. The article did note briefly that indictment of the organizations was a contentious issue, but did not elaborate on why.⁵⁶ While the previous article might have cast the prosecution in a poor light, on 10 February *The Post* ran the same article found in *The New York Times* in which officials from the State Department and Department of Justice praised the trial and its contribution toward world peace.⁵⁷

During the defense phase of the trial, the articles found in *The Washington Post* differed rarely from those in *The Times*. On several occasions though, the former contained information not found in the Gotham standard. For example, *The Post* credited correctly Dönitz's attorney, Otto Kranzbuhler, with pursuing Nimitz as a witness and proposing that the defense obtain an affidavit rather than have the admiral appear in person.⁵⁸ Ribbentrop's testimony concerning Germany's secret agreement with the Soviet Union also received far greater attention in *The Post* than it did in *The Times*. One article cited Ribbentrop's own testimony that a fundamental tenet of the nonaggression pact had been an "agreement to define sphere[s] which came about in a secret agreement."⁵⁹ A second article reported further testimony from Ribbentrop in which he described the partition of Poland as well as failed negotiations with the Soviets to do the same with the Balkans and Scandinavia.⁶⁰ More than a month later, *The Post*, like *The*

⁵⁶ Associated Press, "Judges Irked at Nazi Trials, Question Some of Evidence," *The Washington Post*, 19 December 1945.

⁵⁷ United Press, "Foundations For Peace Seen At Nazi Trials," *The Washington Post*, 10 February 1946.

⁵⁸ United Press, "Doenitz Wants Nimitz Called For Defense," *The Washington Post*, 6 March 1946.

⁵⁹ Associated Press, "Soviet Signed Pact, Ribbentrop Says," *The Washington Post*, 30 March 1946.

⁶⁰ United Press, "Ribbentrop Testifies on Red-Nazi Pact," *The Washington Post*, 2 April 1946.

New York Times, reported the allegations made against the Soviets in Wiezsäcker's testimony.⁶¹

In other instances, *The Washington Post* did not report on or omitted information deemed newsworthy in other publications. The incident on 18 March during the cross-examination of Göring provides one such example. Although it had received scant attention in *The Times*, news of Jackson's confrontation with the *Reichsmarschall* and the subsequent action by the tribunal did not find its way onto the pages of *The Post* at all. The newspaper published only one report of the Katyn Forest controversy. The majority of the article focused on Markov's testimony and did not mention the evidence that pointed toward the Soviet Union's involvement in the massacre, only that Germany had accused them of the slaughter.⁶²

In most instances, *The Post's* reporting on the trial was consistent with that of *The Times* as both relied heavily on news services for their information. If one examined only the articles published in *The Post*, one would be hard-pressed to find any evidence that debates concerning the trial existed. However, over the course of the trial, *The Post* provided its readers with regular and syndicated columnists who, albeit infrequently, supplemented the information found in the news section.

In addressing the legality of the tribunal, the paper's foreign policy columnist Barnett Nover likened the IMT's creation to that of the American colonies separation from Britain. No statue authorized the action, he reasoned, independence arose from the colonists exercise of their natural rights. As such, humanity's outrage justified the creation of the tribunal and the penalties it might impose. Written after the prosecution

⁶¹ United Press, "Witness Says Nazi-Red Pact Split Europe," *The Washington Post*, 22 May 1946.

⁶² Associated Press, "Nazis Made 'Sketchy' Probe Of Murder of 10,000 Poles," *The Washington Post*, 2 July 1946.

had released the indictment, the author contended that the document made clear the guilt of the defendants, the organizations, and the Nazi regime as a whole. Nover concluded by thanking Jackson and the other prosecutors for establishing a precedent that criminalized war.⁶³

Following Jackson's opening address; Nover reflected that the trial would lay bare the Nazi regime to German citizens and the world at large. In addition, the columnist refuted the notion that the trial represented victor's justice citing Jackson's declaration that the war had left few parties truly neutral, and the Allies could not leave a defeated Germany to judge itself. In discussing the legality of count two, Nover labeled the debate hollow as the accused had committed such heinous acts during the war itself. Finally, he invoked Jackson again in addressing the trying of individuals for crimes of the state, citing that "[c]rimes always are committed only by persons."⁶⁴ While Nover would not dedicate another column to the trial until after it had concluded, his affinity for Jackson was apparent.

The Post featured another supporter of the trial, the renowned Walter Lippmann. Like Nover, Lippmann also celebrated Justice Jackson in his nationally syndicated column, *Today and Tomorrow*. In a column ran in late October 1945, Lippmann introduced his readers to the trial, explaining the concept of *ex post facto* and how it might apply to the charge of planning and waging aggressive war. However, he argued that, because the Allies had charged Göring, Hess, and the other defendants with offenses deemed criminal under the laws of most nations (murder, looting, etc), the accused could not escape punishment simply because those crimes were committed during a time of

⁶³ Barnet Nover, "War Criminals, The Indictment of the 24," *The Washington Post*, 20 October 1945.

⁶⁴ Nover, "Nuernberg Trial," *The Washington Post*, 24 November 1945.

war. Lippmann asserted that because the accuseds' guilt was so great their protection under the principle of *ex post facto* would be a gross affront both to those it was meant to protect and to justice in general. Finally, Lippmann conceded that, taken by itself, the violation of treaties detailed in count two might not be enough to warrant prosecution. However, coupled with the other atrocities detailed in counts three and four, Lippmann argued, "the whole record of these men [must] . . . be established."⁶⁵ Like Nover, Lippmann would not write about the trial again until after the tribunal had rendered its verdicts.

The Washington Post proved equal to *The Times* in the editorials it generated in support of the trial, although *The Post* printed most before the trial had even commenced. The newspaper acknowledged in a 10 August editorial that the criminalization of aggressive war and the prosecution of a nation's agents in both its initiation and in the commission of other offenses strayed from established international law. However, it did not deem such innovations as an affront to western legal concepts. Rather, *The Post* viewed the establishment of the IMT as necessary in reinforcing the United Nations Charter and contributing to global peace. Liberally citing both the London Charter and Justice Jackson, the editorial outlined counts two through four and lamented that accusations of victor's justice would be unavoidable due to the inherent conditions surrounding the trial.⁶⁶ A second editorial published in September blamed the United States and the world at large for their failure to codify what *The Post* called "war crimes" following the First World War. Here, the newspaper's accusation toward the international community likely did not refer to "war crimes" as defined in count three of

⁶⁵ Walter Lippmann, "The Nuernberg Trial," *The Washington Post*, 20 October 1945.

⁶⁶ Editorial, "War Criminals," *The Washington Post*, 10 August 1945.

the indictment, as precedent had been clearly set by the Second Hague Convention and the Geneva Protocol. Rather, it most likely referred to count two, crimes against peace, based on the failure of the Kellogg-Briand Pact's signatories to install a means of punishment for its violation. It stated that while it was regrettable the IMT lacked precedent, the three divergent legal systems of the Allies necessitated "compromises and innovations."⁶⁷

Several other editorials followed before the commencement of the trial, overwhelmingly favoring the trial or at least American participation. One commended President Truman for his selection of former Attorney General Francis Biddle and Federal Judge Robert Parker of North Carolina as the American representatives on the tribunal.⁶⁸ Another criticized the other three powers for their tardiness in naming members of the tribunal and assembling their prosecution teams.⁶⁹ After the publication of the indictment, *The Post* recoiled in shock at the allegations found therein. Noting that some opposed the trial because no precedent existed for its creation, the newspaper responded that never before had there been anything comparable to the Nazi conspiracy and the crimes it had generated. In conclusion, the editorial expressed its admiration for Jackson and the other prosecutors, as well as its hope that the tribunal would conduct itself with dignity and fairness.⁷⁰

Preliminary editorials notwithstanding, commentary from *The Post's* editorial board during the duration of the trial was sporadic at best. Commenting on Jackson's opening

⁶⁷ Editorial, "Indicted Nazis," *The Washington Post*, 1 September 1945.

⁶⁸ Editorial, "International Judges," *The Washington Post*, 13 September 1945.

⁶⁹ Editorial, "Nuremberg Delay," *The Washington Post*, 20 September 1945.

⁷⁰ Editorial, "War Crimes," *The Washington Post*, 20 October 1945.

statement, the newspaper published an editorial that contained many of the same points Nover cited in his column of 24 November. Expanding on the theme of individual responsibility, *The Post* cited Jackson's demand that the accused "not take refuge in superior orders."⁷¹ The newspaper's endorsement of Jackson seemed to extend into the spring. Just as it had not reported on the justice's frustrating cross-examination of Göring, *The Post* ignored it in an editorial denouncing the *Reichsmarschall's* performance during his defense. The only indication the editorial gave of Göring's tenacity and potency as an adversary was their description of his pretentiousness and his self-identification as a loyal acolyte of the *Führer's*.⁷²

Deep into the proceedings, as the tribunal heard the individual defenses, in a special editorial to *The Post* Alan Barth commented on both the trial's length and its procedure. He conceded that the almost endless stream of documentation submitted by the prosecution during the four months of the trial and their translation did create monotony inside the courtroom and contributed to disinterest without. However, Barth suggested to his readers that had the prosecution relied predominately on witnesses, the defense would have accused them of bias, embellishment, or, if they had been victims of the accused, spite. He also reminded them that the accused had been in custody for less than a year and, even though the trial likely would continue for another five months, its length would prove trivial if it resulted in a "precedent and a procedure by which international criminals may be brought to justice."⁷³ Barth's editorial represented the last published by *The Post* until October.

⁷¹ Editorial, "Nuernberg," *The Washington Post*, 23 November 1945.

⁷² Editorial, "Goering On The Stand," *The Washington Post*, 19 March 1946.

⁷³ Alan Barth, "History Drones a Monotone at Nurenberg," *The Washington Post*, 21 April 1946.

From August 1945 to September 1946, the only real criticism of the trial found in the newspaper came from one of its readers. In his letter to *The Washington Post*, Wesley M. Bagby of North Carolina questioned the legitimacy of international law as a concept, noting that it existed at the whim of voluntary states. He went on to suggest that when passions subsided, America would look back on the trial in shame, due to the retroactive criminalization of count two. He also suggested that a German or Japanese citizen could look dispassionately at the Allies' conduct during and after the war and assert that they too had committed war crimes.⁷⁴ Neither the paper's editors nor its readers responded to Bagby's letter.

Los Angeles Times

Across the continent, the *Los Angeles Times* presented a neutral tone in its actual reporting, much as *The Post* had done. With the exception of the 21 October article reporting Ley's protest discussed in the previous chapter, the newspaper rarely addressed the concerns associated with the charges and the tribunal itself once the trial actually began. Its report of the trial's commencement made headlines on 21 November and, as it had utilized the same AP report as *The Post*, echoed many of the observations found in the latter article, as well as those found in Kathleen McLaughlin's piece. The *LA Times'* article elaborated that Hess suffered from stomach cramps yet remained in the dock but that physicians had sedated Ribbentrop after he had collapsed and subsequently removed him from the courtroom. In addition, it reported that prosecutors had read the indictment against Kaltenbrunner despite his absence in the dock as the former RSHA chief had suffered a cerebral hemorrhage two days prior. As had *The Post*, the *LA Times* noted that

⁷⁴ Wesley M. Bagby, "Justice In War Trials," *The Washington Post*, 18 September 1945.

Streicher appeared indifferent to the proceedings except to mock Göring as the former *Reichsmarschall* listened while prosecutors read his indictment.⁷⁵

The *LA Times* provided a similar portrait of the defendants as that published in *The Post*, albeit one that was less inflammatory. Not found in either *The Post* or *The Times*, the article's author, Frederick C. Oechsner, was not even a correspondent for the California paper. As the manager of the United Press's Central European office, Oechsner had interacted with the accused during the height of the Third *Reich*. Juxtaposed with their former selves, Oechsner described the defendants as tired, frightened, and sallow, remnants of a nightmarish regime now reduced to actors on a morbid stage.⁷⁶

On the second day of the trial, the *LA Times* diverged from the coverage of the previous newspapers in that it chose not to print substantial portions of Jackson's address. However, like *The Post*, the LA newspaper ignored the statements of Göring and Rosenberg but did refer to the defense's motion challenging the tribunal's standing.⁷⁷ As seen above, the *LA Times*' reliance on the wire services produced many articles that mirrored those found in the eastern newspapers. On occasion, however, articles credited to the new services appeared exclusively in the *LA Times*. Months before either *The New York Times* or *The Washington Post* printed any reference to the defense's introduction of the Katyn Forest massacre; the *LA Times* reported that Dr. Stahmer had asked the tribunal to allow him to call one *Oberleutnant* Arnes as a witness for Hermann Göring. The article mentioned that Stahmer had argued that Arnes's testimony would refute the

⁷⁵ Associated Press, "Ribbentrop Collapses as Trial Opens," *Los Angeles Times*, 21 November 1945.

⁷⁶ Frederick C. Oechsner, "Nazi Chieftains Cower Before Bar of Justice," *Los Angeles Times*, 21 November 1945.

⁷⁷ United Press, "Trial of Nazis Discloses Jap Plot on Stalin," *Los Angeles Times*, 22 November 1945.

accusations levied against the *Wehrmacht* over its alleged role in the massacre.⁷⁸ While the newspaper did not publish a follow up article revealing the tribunal's decision, it would be July before *The Times* or *The Post* addressed the issue of responsibility for the events that occurred in the Katyn Forest.

In relation to Göring's defense, while the *LA Times* covered it well, it too did not present the *Reichsmarschall's* performance as an embarrassment for Jackson and the prosecution. The newspaper described Göring's conduct as candid, truculent, and defiant.⁷⁹ Its description of Jackson invoked images of a stern schoolmaster disciplining a recalcitrant troublemaker, remarking that the justice had given his adversary a "tongue lashing."⁸⁰ Also in line with the other publications, the *LA Times'* coverage of the defenses of Ribbentrop and Hess and the subsequent revelation of the nonaggression pact's so-called "secret protocol" did not reveal any new information. During the defense of Admirals Raeder and Dönitz, however, no article mentioning the Nimitz affidavit appeared in the *LA Times*.

Although little bias surfaced in its actual reporting, it did arise in the columns of the *LA Times'* feature writers in the days leading up to the trial. Mentioned in the previous chapter, Raymond Moley was one of several who supported the trial and, at least in his article of 4 September, raised the issue of trying officers for crimes of the state.⁸¹ Lacking any pretense of solemnity, Ed Ainsworth's flippant column, "As You Might Say," joked that Ribbentrop's headache would pale in comparison to the neck ache he

⁷⁸ United Press, "Court Ponders Goering Plea," *Los Angeles Times*, 10 March 1946.

⁷⁹ Associated Press, "Goering Regrets Lack of More V-Weapons," *Los Angeles Times*, 19 March 1946.

⁸⁰ Associated Press, "Jackson Scores Defiant Goering," *Los Angeles Times*, 20 March 1946.

⁸¹ Moley, "The First Twenty-Four," *Los Angeles Times*, 4 September 1945.

would soon receive.⁸² Unlike Ainsworth, other writers actually addressed the issues associated with the forthcoming trial, even if they did so in a biased fashion. In early September 1945, Bill Henry acknowledged in his column “By The Way” that the world community had never agreed that planning and waging aggressive war was a crime. However, he assured his readers that “convicting the Germans would be a cinch.”⁸³

Once the trial had commenced, columns discussing the proceedings seldom appeared in the *LA Times*. One exception was an analysis and opinion piece by a writer identified only as Polyzoïdes. In his article, he stressed the significance of the tribunal and, more important, the unity of its architects. The dissolution of their alliance, he predicted, would result in a catastrophe that would dwarf the prior war. In relation, responding to the argument that the tribunal was merely an exercise in victor’s justice, since it consisted only of representatives chosen by the Allies, Polyzoïdes maintained that their position represented a mandate from all of the United Nations. Although the tribunal had little precedent to guide it, he concluded, the procedures it followed and the verdicts it issued would establish the foundation of international justice.⁸⁴

While columnists associated with the *LA Times* might have supported the trial, contradictory positions surfaced in the syndicated columns published in the paper. Like *The Post*, the *LA Times* published Lippmann’s column of late October supporting the

⁸² Ed Ainsworth, “As You Might Say,” *Los Angeles Times*, 21 November 1945.

⁸³ Bill Henry, “By The Way,” *Los Angeles Times*, 9 September 1945.

⁸⁴ Polyzoïdes, “Civilized World Has Stake in Trial of Nazis,” *Los Angeles Times*, 21 November 1945.
*Author’s Note: Based on correspondence with Jennifer Goldman, Institutional Archivist and Curator of Manuscripts at the Huntington Library in San Marino, CA, it seems likely that the article’s author was Dr. Adamantios T. Polyzoïdes, a frequent contributor to the *Los Angeles Times* who lectured on foreign affairs at the University of Southern California during the 1940s and 1950s.

trial.⁸⁵ Later, in a column examining the United Nations' commitment to collective security in the Atomic Age, Lippmann cited the trial as the first step towards realizing that ideal, quoting heavily from Jackson's opening address.⁸⁶

However, months before Lippmann's second column, another syndicated columnist expressed doubts on the significance of the trial. Reviewing Jackson's participation at Nuremberg, Frank R. Kent suggested that Jackson's role as chief prosecutor detracted from his service in the U.S. Supreme Court. An established conservative voice, Kent implied, albeit indirectly, that the tribunal's efforts to convey fairness towards the defendants had not resonated with the German people. In an apparent shot at the Soviet Union, Kent concluded that the trial's objectives were "not fully appreciated by the people of this country, not understood by the Germans and not admired by our allies."⁸⁷

The *LA Times* did not exhibit such variance in its editorials. Like its eastern brethren, the newspaper favored the trial. However, unlike *The Times* and *The Post*, the *LA Times* adopted a decidedly emotional tone on its editorial page, often dismissive of the trial's critics. In an editorial from its 1 August edition, the paper noted that wrangling over the particulars of procedure and precedent paled in comparison to the need for retribution. It went on to state that treaties between nations meant little until the world recognized the criminality of war and punished those who initiated it. Furthermore, failure to prosecute war criminals would cripple the newly formed United Nations.⁸⁸ Later, a second editorial defended both delays in the commencement of the trial and Jackson's response to its

⁸⁵ Lippmann, "The Nuernberg Trial," *Los Angeles Times*, 23 October 1945.

⁸⁶ Lippmann, "Control of Atomic Energy," *Los Angeles Times*, 3 April 1946.

⁸⁷ Frank R. Kent, "MR. JACKSON'S WOES," *Los Angeles Times*, 14 December 1945.

⁸⁸ Editorial, "Swift Justice for War Crimes," *Los Angeles Times*, 1 August 1945.

critics. The *LA Times* seemed to affirm the contention that the Kellogg-Briand Pact indeed outlawed warfare as a diplomatic tool and, thus, accusations of *ex post facto* did not apply. In addition, the IMT's denial of *respondeat superior* as a legal defense aroused little sympathy. The editorial's author argued that, even if the IMT allowed the use of *respondeat superior* and dismissed count two, it would be of little consequence for the defendants. Without offering specifics, the editorial contended that Göring, Hess, and the others would "have to answer for other crimes beyond number that shocked and sickened mankind."⁸⁹ Published on the day the trial opened, another editorial reaffirmed the trial's necessity as both a deterrent for future aggressors and a medium through which to impress upon the German people the extent of their former leaders' guilt.⁹⁰ The final editorial published in 1945 by the *LA Times* endorsed the trial but predicted the resurrection of German nationalism if the trial became "a farce . . . [or] snarled in technicalities and intricate legalism."⁹¹ After it had offered the previous opinions, the newspaper's editorial board refrained from commenting on the proceedings until the following autumn.

Commentary did not cease entirely as, on one occasion, an item appeared in the newspaper that shifted attention away from the general issues of the trial to the specific and, in one case, the personal. Unique to the *Los Angeles Times*, the newspaper published a guest editorial from Austrian-born actor Helmut Dantine in response to Ernst Kaltenbrunner's defense in July. Dantine, a former inmate of the concentration camps that encircled Vienna, had known the defendant when both had attended the University of

⁸⁹ Editorial, "Justice for War Criminals," *Los Angeles Times*, 2 September 1945.

⁹⁰ Editorial, "Justice at Nuremberg," *Los Angeles Times*, 20 November 1945.

⁹¹ Editorial, "War Crimes Trial Gets Under Way at Nuremberg," *Los Angeles Times*, 21 November 1945.

Vienna, and he had returned recently from attending the trial. In his editorial, the actor disputed Kaltenbrunner's assertion that he was but a minor part of the Nazi leviathan and, because he was subject to the whims of Himmler, deserving of mercy. Dantine observed that there were "no small wheels in subversive movements – only big wheels."⁹² Dantine ended his editorial by challenging what he perceived as an apathetic public to reconsider the importance of the trial.⁹³ Along with the other editorials, features, and syndicated columns (with the exception of Kent's) published in the *Los Angeles Times*, Dantine's observations indicate that the newspaper was a clear proponent of the trial, even if its actual reporting did not convey that sentiment.

Chicago Daily Tribune

Of the first three publications, it seems fair to suggest that, given the general absence of articles that addressed the trial's more controversial aspects, *The Washington Post* and *Los Angeles Times* maintained a neutral position towards the trial in their actual reporting. Using the same scale to determine objectivity, it appears that *The New York Times*, while it presented various perspectives on the trial, featured articles that favored the proceedings. If the preceding statements are true, then one might reasonably suggest that the *Chicago Daily Tribune* served as a *doppelgänger* to *The Times*. Long an opponent of the Roosevelt Administration, communism, and "internationalism" in general, the paper and its owner, Robert R. McCormick, criticized the trial in its reporting as well as on its editorial page. In fairness to the *Tribune*, it too published articles that reflected opposing viewpoints on the trial. However, just as the majority of such articles printed in *The Times* cast the trial in a positive light, in the *Tribune* the reverse was true.

⁹² Helmut Dantine, "Kaltenbrunner's Defense at Nuernberg," *Los Angeles Times*, 22 July 1946.

⁹³ *Ibid.*

In several instances after the four powers had announced the creation of the IMT, the *Tribune* turned to the city's legal community to support its opposition to the tribunal. Citing a pamphlet published by P.F. Gault, a Chicago attorney and former lieutenant colonel with the U.S. Army's JAG offices, the newspaper contended that the trial violated the fundamental concepts of the American legal system and was diametrically opposed to the country's values. In addition, it cautioned that the implementation of a mass trial and the *ex post facto* criminalization of aggressive warfare reeked of totalitarianism, a not so subtle jab at the Soviet Union's participation in the IMT. Finally, the article warned that, in the event the United States lost a future war, the victors might use the precedents established by the trial against American military leaders.⁹⁴

Several days after the article appeared, the *Tribune* published another article questioning the legitimacy of the proposed trial, which again cited Gault. In the article, Gault stated that an ABA committee formed to examine the question of punishing war criminals had held that the trial concept as Jackson had explained it had no jurisdiction over the accused. Specifically, the committee had declared that no statute or legal custom existed by which the military or civil courts of one or many nations could try individuals of another nation for crimes committed in said nation or against its citizens.⁹⁵ Although the article did not elaborate on what constituted the aforementioned crimes, based on the committee's opinion it seems reasonable to infer that they were referring to count four and count one as it related to the commission of crimes against humanity.

⁹⁴ Unknown, "WAR TRIAL PLAN DENOUNCED AS LAW VIOLATION," *Chicago Daily Tribune*, 17 August 1945.

⁹⁵ Unknown, "LEADERS OF BAR FIND WAR TRIALS LACK PRECEDENT," *Chicago Daily Tribune*, 21 August 1945.

In September, the *Tribune* cited once again the opinions of some in the legal community as the paper reported that a committee organized by the Chicago Bar Association had opposed the tribunal's creation and its jurisdiction in a seven to four vote. Vague in its wording, the article alleged that the tribunal was born from *ex post facto* legislation yet did not explain as to what this actually meant or how the committee had reached that specific conclusion. It did note that the fourteen-member committee voted on two questions: was the initiation of aggressive war a punishable offense under international law prior to 1939 and should a military court have jurisdiction over violators. The committee answered in the affirmative to the former question by a vote of eleven to two and voted seven to four against the authority of the tribunal. The article's author, *Tribune* reporter Orville Dwyer, placed great emphasis on the committee's rejection of the tribunal's authority but did not dwell on their recognition of the legitimacy of count two.⁹⁶ Obviously, the committee's decision was in conflict with the newspaper's position that planning, initiating, or waging an aggressive war was not a crime prior to the London Charter's declaration. However, this revelation did not receive additional attention in the newspaper.

In the weeks leading up to the trial, the Chicago paper printed two articles by its foreign correspondent Hal Foust that contrasted the opinions of Maxwell-Fyfe and Justice Jackson and those of the German lawyers hired to defend the accused. Foust reported that when asked to respond to the trial's critics, Maxwell-Fyfe, assuming a pragmatic position, declared that the tribunal evolved from treaties that had already declared the waging of aggressive war a criminal act. The article noted that, building on the words of his fellow prosecutor, Jackson had asked rhetorically what other options the Allies had

⁹⁶ Orville Dwyer, "MILITARY COURT FOR WAR TRIALS IS OPPOSED HERE," *Chicago Daily Tribune*, 6 September 1945.

other than the summary execution of the accused. Jackson reasoned that deviations in procedure like the trial were necessary in the preservation of world peace. However, when a reporter had asked Jackson how the tribunal might apply to wars in which the aggressor was ill defined, he responded that the language of the IMT's charter limited its scope to "European aggressors only."⁹⁷

The second Foust article reported that the counsel for the defense protested not only the application of count two and the indictment of the six organizations but many of the procedures adopted by the London Charter. More specifically, the article cited the charter's acceptance of count two as a legitimate charge and its denial of *respondeat superior* as a valid legal defense as two areas of contention. Furthermore, the article claimed the defendants were already guilty in the eyes of the world and a criminal court in Germany or Poland could try them for murder just as easily. Rather, the true purpose of the conspiracy charge, the article alleged, was to "justify the harsh treatment of all Germans and the acquisition of German industries and commerce."⁹⁸ It is unclear from the article whether it was Foust or the attorneys interviewed who advocated the latter two assertions.

Unlike the other three publications examined, the *Tribune* relegated news of the trial's commencement to page seven, predicting correctly that the defense would challenge the tribunal's legitimacy the following day.⁹⁹ On that day, Foust's article contained portions of the defense motion and segments of Jackson's opening address. In

⁹⁷ Foust, "NEW PRECEDENT OF WAR CRIMINAL TRIAL DEFENDED," *Chicago Daily Tribune*, 12 November 1945.

⁹⁸ Foust, "NAZI DEFENDERS WILL APPEAL TO WORLD OPINION," *Chicago Daily Tribune*, 12 November 1945.

⁹⁹ Foust, "20 NAZIS MAKE PLEAS TODAY TO WAR TRIBUNAL," *Chicago Daily Tribune*, 21 November 1945.

addition, the newspaper published fragments of Göring's declaration. While the phrasing differed slightly from that published in *The New York Times*, the substance of his statement remained intact.¹⁰⁰

As the trial commenced, it appears that Foust infused a certain degree of cynicism into most of his writings, likely undermining the proceedings in the eyes of his readers. For example, in December, after the defenses had requested that witnesses from Great Britain and the United States testify on their clients' behalf, the *Tribune* published another article by Foust, this one examining the limits of the tribunal's jurisdiction and the conditions under which the witnesses might appear. Assuming some would be unwilling to testify, Foust speculated that if the tribunal subpoenaed a witness (which the London Charter had allowed for) then that witness might challenge the tribunal in his native courts. Although the American prosecution team had stated that the four signatories of the charter would assist in procuring witnesses, Foust wrote that after speaking with members of the British and French teams, they conceded that their own "courts would be reluctant to recognize the jurisdiction of the international tribunal within their own territories."¹⁰¹

In its coverage of the trial, even when reporting on the daily events at Nuremberg, articles published in the *Tribune* often contained cutting remarks directed towards the prosecution, the tribunal, or both, regardless of whether the story originated from one of its correspondents or a news service. For example, when the newspaper printed an article reporting the tribunal's reaction to redundancy in the Americans' presentation of

¹⁰⁰ Foust, "OWN DOCUMENTS WILL CONVICT 20 NAZIS: JACKSON," *Chicago Daily Tribune*, 22 November 1945.

¹⁰¹ Foust, "WAR CRIME TRIAL TEST MAY BE IN U.S. OR BRITAIN," *Chicago Daily Tribune*, 13 December 1945.

evidence using the same AP story used by *The Post*, the Chicago paper ran the story under the headline “JUDGES HECKLE U.S. LAWYER AT WAR CRIMES TRIAL.”¹⁰² When the tribunal declared a recess on 14 January so it could discuss changes in procedure that would accelerate the trial, Foust described the tribunal as being “enmeshed in legal novelties of its own invention.”¹⁰³ Foust then construed that any expediency would come at the expense of the defense, observing that the tribunal was already subject to criticism.¹⁰⁴

In March, Foust continued his critique of the trial, criticizing not only its length but also the fiscal toll levied on the Allied Control Commission and the shattered German economy. As Nuremberg fell within the American occupation zone, Foust argued that the United States shouldered the majority of the financial burden. Aside from asserting that one million dollars had been spent repairing the Palace of Justice, the reporter did not provide an exact figure for the trial’s cost to date. In the article he did contend that, had German courts tried the defendants, it would have cost ten million dollars less, been less time consuming, and have exacted the same punishment on the accused.¹⁰⁵

During the defense phase, the *Tribune* was persistent in its criticism of the trial. On 21 March, it framed Jackson’s cross-examination of Göring in a less than flattering light, despite using the same AP story that had run in the *LA Times* the previous day. Utilizing a similar approach as that applied to the AP article of 19 December, the newspaper

¹⁰² Associated Press, “JUDGES HECKLE U.S. LAWYER AT WAR CRIMES TRIAL,” *Chicago Daily Tribune*, 19 December 1945.

¹⁰³ Foust, “TAKE TIME OUT TO MAP COURSE AT NUERNBERG,” *Chicago Daily Tribune*, 15 January 1946.

¹⁰⁴ *Ibid.*

¹⁰⁵ Foust, “FIND NUERNBERG SHOW TIES UP CAST OF 7,000,” *Chicago Daily Tribune*, 6 March 1946.

inserted the subheading “Defeats Justice Jackson in Row Over Testimony” below the title in an apparent jab at the chief American prosecutor.¹⁰⁶

While the newspaper nestled news of the above exchange on page seventeen of the edition, several days later other testimony that caused some embarrassment for the prosecution featured prominently in the *Tribune*. During Hess’s testimony, news of the nonaggression pact’s “secret protocol” landed on the front page of the Chicago paper’s 26 March edition. In fairness, Raymond Daniell’s article received similar treatment in *The Times* the same day. In the *Tribune*’s article, written by Hal Foust, several minor differences surfaced. Foust reported incorrectly that Colonel Yuri Pokrovsky (spelled “Pocrowski” in the article) rather than Rudenko had objected to Dr. Seidl’s request to enter the Gaus’s affidavit into the record. In addition, he described the agreement as being between “two dictators. . . . For [the] expansion of the[ir] totalitarian governments.”¹⁰⁷ Finally, the correspondent related that Seidl had withheld a portion of Hess’s prepared testimony referring to Great Britain’s usage of concentration camps during the Boer War.¹⁰⁸ While Foust’s misidentification of the Soviet prosecutor was likely an unintentional and cosmetic error, his choice of words when describing Stalin and the Soviet Union and his inclusion of the omitted Hess testimony in his article appear to be a deliberate attack on the tribunal’s co-member, likening the communist state to the Third *Reich*.

Surprisingly, the newspaper missed an additional opportunity to attack the Soviet Union months later. In July, the newspaper virtually ignored the testimony of Colonel

¹⁰⁶ Associated Press, “GOERING SEEKS TO SHED BLAME FOR MASSACRES,” *Chicago Daily Tribune*, 21 March 1946.

¹⁰⁷ Foust, “Hitler-Stalin Pact Cited in Nazi Defense,” *Chicago Daily Tribune*, 26 March 1946.

¹⁰⁸ *Ibid.*

Ahrens and the defenses' allegations that responsibility for the Katyn Forest massacre lay with the Soviet Union. Rather than publish the initial findings of the international commission, the newspaper cited only Markov's statement that the Germans did not allow the commission to conduct a thorough examination of the gravesite. The article itself was less than a third of a column and printed on page fifteen.¹⁰⁹ The following day, the paper printed an article almost identical to the first on page seventeen adding that the commission had reached its conclusion under duress from German officials.¹¹⁰ In the realm of *tu quoque*, Foust's comparisons did not appear to extend to the United States, as during the defenses of Raeder and Dönitz, neither he nor the *Chicago Daily Tribune* reported on the Nimitz affidavit.

While the critiques of Foust and the *Tribune* often centered on the prosecution's performance, the tribunal's legitimacy, and the wartime conduct of its member nations, the newspaper did advance another criticism that went unreported by the other three publications discussed above. On 28 March the *Tribune* reported the tribunal's decision restricting the press's access to documents presented by the defense until the tribunal had ruled on their admissibility. Coming on the heels of Rudenko's objection to the Gaus affidavit, Foust penned an article in which he noted that that Pokrovsky had made the initial request. Paraphrasing the prosecutor, Foust wrote that the Soviet had asked the tribunal to stem the press's access to "irrelevant, dirty, nasty, calumnies by private individuals against such distinguished personages as President Roosevelt."¹¹¹ It seems

¹⁰⁹ Associated Press, "GERMAN CLAIMS QUIZ INTO MASS DEATHS CURBED," *Chicago Daily Tribune*, 2 July 1946.

¹¹⁰ Associated Press, "CHARGES NAZIS WROTE FINDINGS ON SLAIN 11,000," *Chicago Daily Tribune*, 3 July 1946.

¹¹¹ Foust, "BRITON MUZZLES PRESS AT TRIAL OF NAZI LEADER," *Chicago Daily Tribune*, 28 March 1946.

likely that Foust's article reflected the sentiments of McCormick, himself long a staunch proponent of a free press.

In its editorials, the *Tribune* pontificated on many of the issues reported on by Foust and remained adamant in its opposition to the trial, seldom conceding that it could benefit humanity. An editorial published after the London Conference had concluded deemed the proceedings as legally baseless and prejudicial, as the charge of aggressive war was retroactive and the creation of the IMT itself violated the Second Hague Convention by superseding German law.¹¹² Another editorial questioned why Stalin himself was not on trial, citing the Soviet Union's entry into a non-aggression pact with Germany prior to Hitler's attack on Poland in 1939 and the subsequent Soviet invasion of the beleaguered state.¹¹³ President Truman's selection of tribunal members generated attention from the newspaper's editorial board as one editorial observed that, as attorney general during the Roosevelt Administration, Biddle was "a great fellow to make up law as he [went] along."¹¹⁴

As the trial commenced, the newspaper's editorials intensified. Reiterating its denouncement of the trial, one editorial agreed that the accused should stand trial for murder. However, it argued that such trials should occur in established national courts overseen by judges from neutral countries like Sweden and Switzerland. Recalling its earlier pronouncement that Stalin was guilty of the same crimes with which the Allies charged the defendants, the *Tribune* argued further that the Soviet strongman had sabotaged other countries' efforts in stopping Hitler's war machine while the

¹¹² Editorial, "WHAT THEY FORGOT," *Chicago Sunday Tribune*, 12 August 1945.

¹¹³ Editorial, "SPEAKING OF WAR CRIMINALS-," *Chicago Daily Tribune*, 6 September 1945.

¹¹⁴ Editorial, "TOJO AND THE KANGAROO COURT," *Chicago Daily Tribune*, 15 September 1945.

nonaggression pact was still in effect. Under orders from Stalin, the newspaper contended, native communists had contributed to the malaise in prewar France and stymied the flow of American goods to Britain. The editorial also held the French and British partially responsible for the *Reich's* seizure of the Sudetenland and the expansion that followed. In addition, the *Tribune* compared Great Britain with the *Wehrmacht*, arguing that they currently exercised similar practices, albeit to a lesser degree, against the populations of Indo-China and the Dutch East Indies. The piece predicted that the trial's legacy would be one of "self-righteous hypocrisy."¹¹⁵ The *Tribune* repeated its accusation of hypocrisy in several other editorials throughout the trial. One editorial questioned the authenticity of the American protest against former Chetnik leader Draja Mihailovich's treatment during his trial in Yugoslavia. The United States, the *Tribune* declared, forfeited its moral standing when Jackson signed the London Charter.¹¹⁶ A final editorial coincided with the closing summations of Jackson and Shawcross, repeating the accusations the newspaper had made in its editorial of 21 November.¹¹⁷

A week into the trial, the *Tribune* addressed the military's attitude towards the indictment of the German General Staff and High Command. Citing Frank Mason's article in *The Times*, the editorial segued into an evaluation of the conspiracy charge and the concept of institutional guilt, arguing that Jackson's trial concept resembled more closely Nazi procedure rather than American legal traditions. As a precursor to Foust's article of 13 December, the editorial asserted that American courts would deny the

¹¹⁵ Editorial, "TRIAL AT NUERNBERG," *Chicago Daily Tribune*, 21 November 1945.

¹¹⁶ Editorial, "SOME POLITICAL TRIALS," *Chicago Sunday Tribune*, 23 June 1946.

¹¹⁷ Editorial, "NUERNBERG HYPOCRITES," *Chicago Daily Tribune*, 30 July 1946.

authority of the IMT if the latter compelled U.S. citizens to testify.¹¹⁸ A few weeks later, the *Tribune* linked the debate over the IMT's jurisdiction, as well as the New Dealers who supported it, to a more nefarious objective. The editorial reported that, in a speech in New York, Connecticut Senator Brian McMahon had broached the subject of whether the United Nations could "prosecute an individual or group . . . for violations of a nature which may lead to world insecurity."¹¹⁹ His words, the editorial asserted, indicated that McMahon, a former assistant attorney general during the Roosevelt Administration, concurred with Jackson's supposed sentiments that the United Nations superseded the Constitution of the United States.¹²⁰

The *Tribune's* objections to the tribunal's evidentiary procedures surfaced in several other editorials throughout the spring. In March, after Seidl's attempted submission of the Gaus affidavit and the Pokrovsky request, one editorial contested Jackson's declaration in his opening statement that one of the purposes of the tribunal was to establish for the historical record the events of the previous decade. That record, the editorial argued, was incomplete because the tribunal had ruled some of the defense's evidence irrelevant.¹²¹ In a later editorial, the publication accused Jackson of only submitting evidence that condemned the defendants but vindicated the Soviet Union and Britain.¹²²

¹¹⁸ Editorial, "POLITICAL TRIAL," *Chicago Daily Tribune*, 28 November 1945.

¹¹⁹ Editorial, "KANGAROO COURTS FOR AMERICA," *Chicago Daily Tribune*, 9 December 1945.

¹²⁰ *Ibid.*

¹²¹ Editorial, "WORSE THAN A CRIME," *Chicago Sunday Tribune*, 31 March 1946.

¹²² Editorial, "EVIDENCE AT NUERNBERG," *Chicago Daily Tribune*, 14 June 1946.

When addressing the motivation behind the indictment of the six organizations and the prosecutions' application of the conspiracy charge, the *Tribune* treated the prosecution with suspicion. Despite Jackson's assertion that a conviction of the indicted organizations would not result in an automatic conviction of its members, the newspaper argued that in subsequent trials the burden of proof would rest with the defense in contradiction to American legal principles. Thus, the editorial reasoned, the indictment of a member of an organization already declared criminal by the tribunal would likely result in a conviction. The real intent of the conspiracy charge, the editorial concluded, was to assign guilt to the entire German nation.¹²³ The newspaper repeated the previous allegation in a sanctimonious editorial on Easter Sunday. In it, the *Tribune* declared that the proceedings at Nuremberg were so corrupt as to "have gagged Pilate."¹²⁴

The newspaper's homily, while exaggerated in its prose, does demonstrate well the position held by McCormick and his publication towards the trial. In keeping with the scriptural tone of the previous editorial, when compared with the *LA Times*, *The Post*, and *The Times*, McCormick might have felt like the Prophet Isaiah, that is, a voice in the wilderness. However, in *The Wall Street Journal*, the *Tribune* found an ally, albeit an ally that seemed less concerned with covering the events at Nuremberg.

The Wall Street Journal

As discussed in the previous chapter, the quantity of coverage provided by *The Wall Street Journal* fell far short of the other four publications. On 21 November, the financial journal published a short blurb on its front page noting simply that the opening day of the trial consisted of the reading of the indictments by the prosecution and that both Hess and

¹²³ Editorial, "MR. JACKSON'S JUSTICE," *Chicago Daily Tribune*, 19 March 1946.

¹²⁴ Editorial, "EASTER DAY AND THE DEVIL," *Chicago Sunday Tribune*, 21 April 1946.

Ribbentrop had fallen ill during the proceedings.¹²⁵ Throughout the remainder of the trial, *The Journal's* coverage was sporadic at best and did not report on the prosecution's performance, the emergence of the nonaggression pact's "secret protocol," or the disputed culpability for the carnage in the Katyn Forest. When the American prosecutors asked for a conviction on count one against the indicted organizations, the newspaper did acknowledge that it represented "the most complicated phase of the Nuernberg proceedings."¹²⁶

Equaling the condemnation found in McCormick's newspaper in substance, if not in frequency or piquancy, *The Journal* published a denunciation of the trial, as well as the involvement of the U.S.S.R., in its editorial section. Written by journalist and historian William Henry Chamberlin, the opinion piece noted correctly that the Soviet Union would not face repercussions for its invasion of Finland in 1939 and the Baltic States months later and echoed the *Tribune's* contention that there was no precedent for the trial. However, the article did concede that those who had formulated the aggressive policies of both Germany and Japan and who had committed atrocities deserved severe retribution. Yet the injustice of prosecuting whole classes in the process, Chamberlin argued, would nullify the apt punishment of those truly guilty. The classes referred to by Chamberlin included industrialists and those whose actions "would be considered patriotic if performed in the service of the United Nations [re Allies]."¹²⁷ A bastion of political conservatism, the financial paper's renunciation of the trial comes as no surprise.

¹²⁵ Wire Report, "What's News-World Wide," *The Wall Street Journal*, 21 November 1945.

¹²⁶ Wire Report, "What's News-World Wide," *The Wall Street Journal*, 18 December 1945.

¹²⁷ William Henry Chamberlin, "The War Criminal Trials," *The Wall Street Journal*, 25 September 1945.

However, unlike the *Tribune*, *The Journal* would not publish another editorial pertaining to the trial until its conclusion the following October.

As the tribunal deliberated on the fates of the twenty-two defendants, the five publications and the world at large awaited its decision. The eventual verdicts, sentences passed, executions, and a surprising turn of events would provide further fodder for their editorials. Such reactions would cement the publications' positions towards the International Military Tribunal and the Trial of the Major War Criminals.

CHAPTER FOUR

THE END . . . AND THEN THE FIREWORKS: REACTIONS TO THE VERDICTS, SENTENCING, AND PRECEDENTS ESTABLISHED

“I was a little astonished that they found it so easy to deal with a military man. I should have thought that the military would have provided a special problem.”¹ – General Dwight D. Eisenhower, 2 October 1946

In the weeks leading up to the tribunal’s announcement of the verdicts, a blanket of security had enveloped the Palace of Justice, preventing any premature reports of the tribunal’s deliberations. With little to account for save the disposition of the defendants, the press devoted most of its coverage to reviewing the proceedings and speculating on the potential fate of the accused and the impact of the verdicts. In an editorial in early September, the *Los Angeles Times* observed that the trial’s prominence on the global stage had lessened, supplanted instead by the growing tensions among the Allies and the realignment and reconstruction of the postwar world. While lamenting the public’s waning attention, the editorial espoused the belief that the precedents set by the trial might serve “as a landmark in the progress of civilization.”² However, two rulings issued by the tribunal, just days before it was to announce the verdicts, shifted the attention of the *LA Times* and its brethren away from such optimistic predictions and back on the tribunal itself. These announcements generated some attention from the press, although, in the newspapers examined, coverage of the tribunal’s declarations was relatively incongruent. In one publication, reaction to the tribunal’s declarations, or the lack of a reaction, raises questions about the newspaper’s motives. Conversely, another newspaper’s reaction to the same decree would reinforce its position toward the IMT.

Coverage of the first of the tribunal’s rulings, the barring of photographers from the courtroom during sentencing, was relatively uniform. While *The Journal* and *The Post*

¹ Associated Press, “EISENHOWER AMAZED AT KEITEL VERDICT,” *The New York Times*, 3 October 1946.

² Editorial, “The Precedent-Making Trial Ends,” *Los Angeles Times*, 3 September 1946.

did not publish any news relating to the ban, *The Times* published its first report on the ruling on 28 September, noting that the international correspondents' committee had lodged a protest with the tribunal over its decision.³ The following day the paper again reported on the committee's objection as well as an individual protest by the British correspondents after the tribunal allocated ten of their forty-five seats in the gallery to members of the German press.⁴ *The Times* credited the AP as the source of both articles. In an article also culled from the AP, the *LA Times* noted the committee's protest.⁵ Like the other two newspapers, the *Tribune* ran a story on the ban attributed to the AP.⁶

However, the articles in both the *LA Times* and *Tribune* contained information pertaining to the tribunal's second ruling that went unreported in *The Times*. The tribunal had announced that, as part of the security precautions, either the tribunal itself or the United States Army would prosecute individuals who leaked information about the deliberations before the verdicts' official release.⁷ In addition to the *Tribune* and the *LA Times*, *The Post* also reported on the tribunal's gag order.⁸ As it had with the tribunal's ban on photographers, *The Journal* chose not to report on the ruling.

It seems odd that *The New York Times* did not publish any news of the gag order. To attribute the newspaper's omission to mere oversight seems rather naïve given the quantity of coverage it had devoted to the trial and its aforementioned usage of the AP as

³ Associated Press, "Picture Ban Protested," *The New York Times*, 28 September 1946.

⁴ Associated Press, "Security Measures Tightened," *The New York Times*, 29 September 1946.

⁵ Associated Press, "Nazi Sentences Due on Tuesday," *Los Angeles Times*, 28 September 1946.

⁶ Associated Press, "'LEAK' IN WAR CRIMES RULINGS TO BE PUNISHED," *Chicago Daily Tribune*, 28 September 1946.

⁷ Ibid.

⁸ United Press, "Fate of 21 Nazis Believed Decided," *The Washington Post*, 28 September 1946.

the source of the two articles mentioned above. However, to suggest the newspaper withheld news of the ruling so as not to taint the tribunal with the stench of censorship seems almost equal in its cynicism. As noted in previous chapters, although *The Times* often softened the tone of its coverage when reporting instances that cast the tribunal or the prosecution in an unflattering light (such as it had during the Göring cross-examination), the newspaper had not shied away from addressing the more controversial aspects of the IMT in its reporting or on its editorial page despite its acknowledged support of the trial. Without additional information, it falls on the reader to determine if either line of reasoning contributed to *The Times*' lack of coverage regarding the gag order.

While *The Times*' failure (intentional or otherwise) to address the censorship might have left its readers unsure of the newspaper's position on the issue, the *Chicago Daily Tribune*'s reaction to the ruling left little doubt. Two days after the Midwestern publication reported on the gag order, an editorial in the *Tribune* challenged the tribunal's decrees. This would not be the first time McCormick had opposed censorship. The publisher had long been an advocate of free speech even that when the views expressed might have offended his conservative sensibilities. While serving as the chairman of the American Newspaper Publishers Association's Committee on Freedom of the Press, McCormick, in conjunction with the American Civil Liberties Organization, had financed a successful effort to overturn Minnesota's Public Nuisance Law in 1931. The law, known as "Lommen's Gag Law" after its sponsor, had allowed for the suppression of publications deemed malicious, lewd, or derogatory by Minnesota courts.⁹

⁹ Richard Norton Smith, *The Colonel: The Life and Legend of Robert R. McCormick, 1880-1955* (Evanston, IL: Northwestern University Press, 2009), 279-84.

Given McCormick's sentiments and the newspaper's position toward the tribunal's suppression of documentary evidence in March, the Tribune's opposition to the IMT's announcement is not surprising. The tribunal, the editorial argued, had no authority to prosecute the correspondents who released such proscribed information or the owners of the newspapers that published it. Any jurisdiction extended by the tribunal over American journalists or anyone else, the editorial's author contended, would be as fraudulent as its jurisdiction concerning the accused. To the *Tribune*, the imposition of the gag order was the latest example in what had been a long line of specious conduct by the tribunal (including the aforementioned evidentiary ruling) and rendered the legitimacy of the upcoming verdicts moot. The editorial concluded by comparing the methods used by the tribunal to those utilized by Hitler, Stalin, and Tito.¹⁰

The same day the *Tribune* published the editorial discussed above, the tribunal ruled on the criminality of the six indicted organizations. Given the five-hour difference in time between Germany and the United States, three of the five newspapers published accounts of the verdicts the same day the tribunal announced them and each article featured prominently on the publications' front pages. Lagging in its coverage, *The Post's* article did not contain information about the tribunal's decision, only an examination of the tightened security around the Palace of Justice and a description of the order of the proceedings.¹¹ News of the proceedings would not appear in *The Journal* until the following day.

The *LA Times* provided the most succinct coverage, reporting that, after summarizing the evidence presented to it, the tribunal announced that it was sufficient to establish that

¹⁰ Editorial, "VERDICT AT NUERNBERG," *Chicago Daily Tribune*, 30 September 1946.

¹¹ Unknown, "Nuernberg Verdicts Due Today," *The Washington Post*, 30 September 1946.

multiple conspiracies had existed among the defendants and their affiliated organizations to constitute a nationwide conspiracy in the planning of aggressive war. Despite a title that implied that the tribunal had already sentenced the individual defendants, the article went on to state the tribunal had ruled that the planning and execution of an aggressive war was indeed illegal and that the *Gestapo*-SD, SS, and the NSDAP leadership were in fact criminal organizations and, thus, their former members could face prosecution. While the tribunal declined to rule on the criminality of the SA, citing its effective emasculation following the blood purge of 1934, it declared that the *Reich* Cabinet and the German General Staff and High Command were not themselves criminal, while noting that membership in the two organizations did not exempt individuals from prosecution for individual war crimes.¹²

As had been common throughout the trial, *The Times* and *Tribune* each devoted considerable space to covering the activities at Nuremberg. Elaborating on the information found in the *LA Times*' article, both publications noted the tribunal's condemnation of the German General Staff and High Command although neither identified its speaker, Sir Geoffrey Lawrence. Speaking on behalf of the tribunal, the British jurist stated that, despite its acquittal, members of the organization were "a disgrace to the honorable profession of arms."¹³ In addition to their descriptions of the tribunal's ruling, in the same edition both newspapers published articles that promoted access for the press to any potential executions ordered by the tribunal. The *Tribune* reported that Pennsylvania Congressman Herbert McGlinchey had sent President Truman a letter protesting the Allied Control Council's proposed ban prohibiting correspondents

¹² Associated Press, "21 High Nazis Held Guilty of Crimes," *Los Angeles Times*, 30 September 1946.

¹³ Associated Press, "WAR-CRIMES COURT ACQUITS GERMANY'S MILITARY STAFFS AS GROUPS, NOT INDIVIDUALLY," *The New York Times*, 30 September 1946.

from attending any executions ordered by the tribunal.¹⁴ Likewise, *The Times* noted that UP President Hugh Baillie had filed a petition with the American representative on the control council, General Joseph T. McNarney, requesting that it allow members of the press to attend such executions.¹⁵

On 1 October, *The Wall Street Journal* published an account of the previous day's proceedings. Brief to the point of being incorrect, *The Journal* announced that the tribunal had found four organizations to be non-criminal, listing the German General Staff and High Command as two separate entities. In addition, the article stated erroneously that the tribunal had declared only *several units* of the *Gestapo*, Elite Guard (SS) and spy system (SD) criminal rather than the organizations in their entirety. The article did not refer to the guilt of the Nazi leadership corps. However, *The Journal* article did convey the main point desired by Jackson throughout the trial, that the IMT had ruled that "starting a war . . . [was] 'the supreme crime.'"¹⁶

Like *The Journal*, on 1 October *The Washington Post* published the tribunal's verdicts as they related to the six indicted organizations. Comparable in its detail to *The Times* and the *Tribune*, *The Post's* article also revealed that Keitel, after listening to the evidentiary summary, had assumed the tribunal would sentence him to death and had requested an execution by firing squad. Addressing the issue of the press's presence at any potential execution, *The Post* reported that the Allied Control Council would allow

¹⁴ Associated Press, "Congressman Protests Ban on News at Nuernberg," *Chicago Daily Tribune*, 30 September 1946.

¹⁵ United Press, "FULL NEWS COVERAGE OF EXECUTIONS URGED," *The New York Times*, 30 September 1946.

¹⁶ Wire Report, "What's News-World Wide," *The Wall Street Journal*, 1 October 1946.

two newspaper correspondents from each of the four nations represented on the tribunal to witness any executions.¹⁷

Unlike *The Post* and *The Journal*, the articles published in the *LA Times*, *The Times*, and the *Tribune* on 1 October recounted the individual verdicts, with the latter two papers' headlines announcing the guilt of nineteen of the twenty-two defendants (including the absent Bormann). Because sentencing occurred separately following the noon recess, the newspapers reported only the guilt or acquittal of the defendants.

The *Tribune's* coverage of the actual verdicts was relatively brief, providing a list of the individual defendants and their guilt as it related to the individual counts. The newspaper reported that the tribunal had acquitted Schacht, Von Papen, and Fritzsche (although German officials would later try and convict each during later denazification trials). The article also noted that the tribunal had convicted Göring, von Ribbentrop, Rosenberg, Keitel, Jodl, and von Neurath on all four counts and had found Hess guilty of counts one and two.¹⁸ In addition, a follow up article by Hal Foust reported that the tribunal's ruling had established that in the future political leaders would possess accountability for the crimes of the state. Foust went on explain that in subsequent trials the burden of proving one's own innocence would rest on the accused, as the tribunal's declaration of criminality of the four organizations had "branded an estimated 400,000 Germans as war criminals."¹⁹

¹⁷ Associated Press, "Hitler Gang Found Guilty By Tribunal," *The Washington Post*, 1 October 1946.

¹⁸ Associated Press, "19 NAZIS GUILTY; ACQUIT 3," *Chicago Daily Tribune*, 1 October 1946.
*Author's Note: For a complete table containing the tribunal's verdicts as well as the sentences passed, see Appendix F.

¹⁹ Foust, "FIRST TIME IN HISTORY," *Chicago Daily Tribune*, 1 October 1946.

Given the *Tribune's* opposition to the trial, as well as the piquancy of some of Foust's earlier work, the latter assertion seems to suggest that some of the trial's repercussions would stand in stark contrast to the traditional legal principle of an assumption of innocence. However, in the same edition the *Tribune* published a short article reflecting the allayment of what had been one of the newspapers' primary concerns. Having maintained the position that the indictment of the German General Staff and High Command set a dangerous precedent for military officers in general, the newspaper reported that the general staff's acquittal as an organization had met with approval by American army officers. The article quoted the deputy chief of the U.S. Army's intelligence division in Europe, Colonel D.F. Fritzsche, who, when expressing his relief at the tribunal's ruling, stated that "it is encouraging to any staff officer that the court has not set a precedent under which he might . . . be prosecuted just for doing his job."²⁰

One should note, however, that the acquittal of the German General Staff and High Command did not eradicate all discussion in the print media about the tribunal's conviction of Keitel, Jodl, and the two admirals. Although Eisenhower's coy statement, found in the opening of this chapter and published in the *LA Times* as well as *The New York Times*, did not articulate the general's concerns, just days before the executions *The Post* featured a column that alleged that Eisenhower was disturbed by the convictions. A beltway insider known for his column *Washington Merry-Go-Round*, Drew Pearson wrote that Eisenhower believed the verdicts could have negative repercussions in the event of a future war with the Soviet Union. However, Pearson noted that Washington

²⁰ Associated Press, "U.S. OFFICERS PLEASED BY COURT RULING ON NAZI HIGH COMMAND," *Chicago Daily Tribune*, 1 October 1946.

officials had dismissed such fears, stating that the trial had only declared aggressive warfare illegal.²¹

In the *LA Times*, coverage of the verdicts mirrored that of the 1 October *Tribune*, as the California paper credited the AP as its article's source. The only notable information found in the newspaper was a supplemental article affirming, as *The Post* had that same day, that the Allied Control Council would allow the press access to any executions forthcoming. The article attributed the control council's decision to Baillie's appeal.²²

The New York Times also reported the control council's announcement in its 1 October edition although one could easily overlook it amidst the newspaper's articles devoted to the tribunal's ruling and the defendants' reactions.²³ In its main article, *The Times* provided a complete list of the verdicts and included portions of the tribunal's justifications for its decision. The article also contained *The Times*' prediction that most, if not all, of the convicted would likely hang or be shot.²⁴ Specific to a companion piece written by Dana Schmidt was a passage that asserted that the tribunal's verification that aggressive war was indeed an international crime reflected the evolutionary nature of international law.²⁵ Finally, *The Times* published a summary of the tribunal's judgment of the six indicted organizations. The summary included the tribunal's rationale when

²¹ Drew Pearson, "Nuernberg Verdict Worries Ike," *The Washington Post*, 13 October 1946.

²² United Press, "Press to View Execution of Nazi War Chiefs," *Los Angeles Times*, 1 October 1946.

²³ Associated Press, "8 Correspondents to See Any Execution of Nazis," *The New York Times*, 1 October 1946.

²⁴ United Press, "ALL EXCEPT 3 OF NAZI WAR CHIEFS GUILTY; GOERING, HESS, VON RIBBENTROP CONVICTED; SCHACHT, VON PAPEN, FRITZSCHE ACQUITTED," *The New York Times*, 1 October 1946.

²⁵ Dana Adams Schmidt, "War Guilt Declared," *The New York Times*, 1 October 1946.

considering the credibility of each individual count.²⁶ The AP had originally provided the condensed report for members of the press, and the text found within came directly from the trial's official record. However, of the five newspapers included in this study, only *The New York Times* chose to reprint it in its entirety.

The Times was also the first of the five newspapers to comment on the verdicts on its editorial page. Characterizing the justice meted out by the tribunal as passionless and in accordance with the best legal tenets of modernity, the editorial stated that, although fundamental questions pertaining to the tribunal's jurisdiction remained, the verdicts rendered and their inherent fairness were beyond reproach. Due to the tribunal's stance on the legality of aggressive war, the editorial warned, political leaders would now utilize belligerency as a method of foreign policy at their own peril. In addition, the editorial argued that the declaration of criminality against the SS, leadership corps, and *Gestapo*-SD did not extend guilt to all of their members, as later tribunals would consider individual circumstances. *The Times* concluded its editorial by declaring the tribunal's ruling "a magnificent achievement and a long step toward a new conception of international justice which makes future peace more secure."²⁷

The sentences and ensuing dissension from two of the tribunal's members provided additional grist for the New York newspaper. Excluding editorials, nine articles devoted to the proceedings appeared in *The Times*' 2 October edition, including the complete text of nine of the individual verdicts, excerpts from nine others, and summaries of still

²⁶ Associated Press, "International Tribunal's Summary of Its Judgment on the Actions and Leadership of Nazism," *The New York Times*, 1 October 1946.

²⁷ Editorial, "JUDGMENT AT NUREMBER," *The New York Times*, 1 October 1946.

another four.²⁸ Reporting on the sentences, Kathleen McLaughlin noted that Göring, Keitel, Jodl, and nine other condemned men (including Bormann, assuming he was ever located) would hang within fifteen days. However, Hess received a life sentence. In her article, McLaughlin noted that the Soviet member of the tribunal, Nikitchenko, had objected to the three acquittals, the exoneration of the German General Staff and High Command, and Hess's sentence, believing that the former Deputy *Führer* deserved the ultimate penalty. The tribunal, the article stated, would publish Nikitchenko's opinion in its official record.²⁹ Although unreported in the McLaughlin article, the Soviet alternate Volchkov joined Nikitchenko in his dissent. Foreign correspondent Anne O'Hare McCormick complemented McLaughlin's work by providing a narrative on *The Times*' editorial page of the sentencing itself. Interspersed with observations on the future impact of the verdicts, McCormick described the defendants' behavior begrudgingly noting that, without exception, each had conducted himself with dignity.³⁰

The Times also reported that Robert Jackson had joined the Soviets in their dissent. Specifically, the justice protested the acquittals of Schacht and von Papen, as well as the absolution of the General Staff and High Command. However, the article asserted that, despite his professed shock over Schacht's acquittal, Jackson had contended the individual verdicts were secondary to the precedents the trial had established.³¹

²⁸ Associated Press, "Texts of Verdicts of the International Military Tribunal in Trial of German War Leaders," *The New York Times*, 2 October 1946.

²⁹ McLaughlin, "12 NAZI WAR LEADERS SENTENCED TO BE HANGED; GOERING HEADS LIST OF THOSE TO DIE BY OCT. 16; HESS GETS LIFE; SIX OTHERS ORDERED TO PRISON," *The New York Times*, 2 October 1946.

³⁰ O'Hare McCormick, "Last Public Appearance of Men at Nuremberg," *The New York Times*, 2 October 1946.

³¹ Associated Press, "Russian and Jackson Object; Schacht Called a Swindler," *The New York Times*, 2 October 1946.

Accompanying the previous article, the newspaper published Jackson's full statement in its entirety.³²

Unique to *The Times*, the newspaper featured a special opinion piece written by its military editor, Hanson Baldwin, that appeared alongside its coverage of the sentencing. Baldwin observed that the acquittals of Schacht, Fritzsche, and von Papen, along with the tribunal's exoneration of the three indicted organizations, had helped legitimize the trial in the eyes of many of its critics. The conduct of the IMT, he continued, contrasted favorably with earlier war crimes trials undertaken by the Allies. Baldwin pointed particularly to the trial and execution of the commander of the Japanese Fourteenth Army Group, Lieutenant General Tomoyuki Yamashita. Noting that an American military tribunal had convicted Yamashita in part because of war crimes committed by subordinates in the Philippines without his authorization or consent, Baldwin wrote that many in the American military feared the IMT would follow similar procedural rules after it had indicted the German General Staff and High Command. The organization's absolution and the conduct of the tribunal during the proceedings, Baldwin concluded, had upheld the concepts of western justice.³³ *The Times* supplemented Baldwin's editorial with another that, while sympathetic to the Soviets' dissent, asserted that the tribunal's jurisdiction did not extend to domestic crimes of which Schacht, Fritzsche, and von Papen were assuredly guilty of committing.³⁴

On 3 October, *The Times* published another editorial espousing the virtues of the tribunal and illustrating, at least in its opinion, the precedents set by the trial. Foremost

³² Unknown, "JACKSON STATEMENT," *The New York Times*, 2 October 1946.

³³ Hanson W. Baldwin, "Nuremberg Trial Upholds Our Justice," *The New York Times*, 2 October 1946.

³⁴ Editorial, "THE NUREMBERG SENTENCES," *The New York Times*, 2 October 1946.

among them, the editorial stated, was the illegality of aggressive war and the supreme jurisdiction the international community now possessed to indict transgressors. While the editorial conceded that during the recent trial only the vanquished had faced prosecution, it noted that in the future the international community would hold all nations, including the IMT's designers, to the same standard.³⁵

Unlike *The New York Times*, the editorial boards of both *The Wall Street Journal* and *The Washington Post* did not opine on the proceedings or the impact of the trial. In fact, in the days immediately following the trial, their combined coverage paled in comparison to that of *The Times*, as both publications condensed their coverage of the verdicts and the sentencing into two concise articles. Aside from its mention of the Soviets' opposition to the acquittals, *The Journal* article of 2 October did not allude to any other responses to the proceedings in Nuremberg, be they from individuals or media outlets. The paper made no mention of Justice Jackson's concurrence with the Soviet dissent. Rather, *The Journal's* article provided an outline of the events of 30 September and 1 October without providing a full record of the sentences.³⁶

The Post encapsulated much of the information related in McLaughlin's work and other AP pieces published in *The Times*, including the acquittals of Schacht, von Papen, and Fritzsche.³⁷ A day later, the Washington paper published a composite of reactions to the sentences among the world's press. Containing observations from both *The Times* and *Tribune*, *The Post's* article related that the international press had a generally favorable view of the proceedings. Further, the article reported that newspapers in

³⁵ Editorial, "THIS IS THE LAW," *The New York Times*, 3 October 1946.

³⁶ Wireless Report, "What's News-World Wide," *The Wall Street Journal*, 2 October 1946.

³⁷ Associated Press, "Goering, Ribbentrop, 10 Others to Hang; Von Papen, 2 More Freed; 7 Get Prison," *The Washington Post*, 2 October 1946.

addition to *Pravda* in other countries once under German occupation decried the acquittals. Such protest, *The Post* explained, extended beyond areas under Soviet influence such as Poland. Newspapers in Paris and the three Western military zones in Berlin also denounced the acquittals. The only exception noted in the article originated in the Italian publication *Il Buonsenso*. *The Post* reported that, in its editorial, *Il Buonsenso* portrayed the tribunal members as hypocrites and argued the verdicts amounted to victor's justice. In its description of the Italian paper, *The Post* asserted that it had fascist sympathies.³⁸

While editorials commenting on the verdicts never appeared in *The Washington Post* during the period examined, Barnet Nover devoted a column to the trial two days after the tribunal announced the sentences. This would be the last column Nover dedicated to the war crimes trial and, like the others, presented it in a favorable light. In his column, Nover agreed with Jackson's contention that the tribunal's rejection of individual immunity for the crimes of the state and its criminalization of aggressive warfare as a diplomatic tool dwarfed the fate of the individual defendants. The foreign policy columnist praised the work done by the Allied prosecutors and called the trial "a great landmark in the history of civilization."³⁹ The praise offered by Nover's colleague at *The Post* a few weeks later was less grandiose. In an editorial published on the eve of the executions, Associate Editor Merlo Pusey conceded that the tribunal had conducted itself appropriately and the verdicts rendered were just. However, Pusey observed that the London Charter had created only a temporary solution. Because the executive agreement entered into by its members was impermanent, Pusey suggested that an international

³⁸ Unknown, "World Press Assails Sentences of Nazis," *The Washington Post*, 3 October 1946.

³⁹ Nover, "Nuernberg Verdict," *The Washington Post*, 3 October 1946.

convention codify the model established at Nuremberg and assign responsibility of future trials to the International Court of Justice at The Hague.⁴⁰

On the opposite end of the North American continent, the *LA Times*' coverage relating to the sentencing produced a menagerie of articles that ventured from the proficient and insightful to the macabre. In its primary coverage, the paper differed slightly from *The Post* in that the former did not mention Jackson's dissent or discuss future prosecution against those acquitted.⁴¹ However, in a separate article that reported Jackson's contention that the individual verdicts paled in comparison to the precedents established, the newspaper did note the justice's objections.⁴² Accompanying the former article, the paper provided its readers with a summary of the defendants' charges, the verdicts, and the sentences passed.⁴³

In the same edition, the *LA Times* reported that the sentences had met with approval from the area's Jewish community. The article stated that, at a meeting sponsored by the Jewish Black Book Committee, speakers had called the sentences "'just and fair.'"⁴⁴ The article is remarkable given that, of the five publications examined, only the *LA Times* offered reactions from the Jewish-American population. Also notable by its origin, its implication, and the sensationalism offered by its implications, the newspaper published a short blurb attributed to the Chicago Tribune Press Service. The article reported that an

⁴⁰ Merlo Pusey, "After Nuernberg," *The Washington Post*, 15 October 1946.

⁴¹ United Press, "Goering and 10 Other Hitler Chiefs Must Hang in 15 Days," *Los Angeles Times*, 2 October 1946.

⁴² Associated Press, "RUSSIAN JURIST RAPS ACQUITTAL," *Los Angeles Times*, 2 October 1946.

⁴³ Associated Press, "NAZIS' SENTENCES AND CRIMES LISTED," *Los Angeles Times*, 2 October 1946.

⁴⁴ Unknown, "Nuernberg Verdicts Given Approval," *Los Angeles Times*, 2 October 1946.

unnamed London company had shipped nooses created especially for the condemned to Nuremberg. Without citing a source, the article concluded by noting that unidentified individuals had placed the order before the tribunal had announced the verdicts.⁴⁵ The following day, a UP article published in the newspaper reported that the expected British executioner, Albert Pierrepoint, had returned to London. The article also reported that the official hangman for the U.S. Army, Master-Sergeant John C. Woods, was “itching to execute the 11 Nazis.”⁴⁶

Reaction to the verdicts among the syndicated columnists carried in the newspaper, as well as its editors and other contributors, was favorable. In his column, Walter Lippmann applied the verdicts of the tribunal to the present global state rather than focus on the trial itself. He observed that, while others might launch wars of aggression in the future, the entire world would hold such transgressors accountable.⁴⁷ Echoing the previous sentiments expressed by Lippmann in his column of 2 October, the *LA Times* editorial board contended that the precedents established by the tribunal’s rulings advanced the cause of peace. Examining the acquittal of Schacht, the editorial observed that the banker’s exoneration should not dampen the general feeling of elation surrounding the convictions of the other nineteen men. Moreover, the editorial concluded by calling the tribunal’s judgment “the greatest single accomplishment on the side of civilization since the war [had] ended.”⁴⁸

⁴⁵ Chicago Tribune Press Service, “Specially Made Nooses Sent to Hang Nazis,” *Los Angeles Times*, 2 October 1946.

⁴⁶ United Press, “U.S. Sergeant May Execute 11 Nazi Chiefs,” *Los Angeles Times*, 3 October 1946.

⁴⁷ Lippmann, “THE JUDGMENT OF NUERNBERG,” *Los Angeles Times*, 2 October 1946.

⁴⁸ Editorial, “The New Law of the World,” *Los Angeles Times*, 2 October 1946.

Polyzoides also weighed in on the acquittals and what he believed were lenient sentences for some of the convicted. Noting the surrealism of being in concurrence with the views espoused within the Soviet Union, the author argued that Schacht and von Papen shared in the guilt of the convicted and should share in their fate. Polyzoides went on to assert that the prison sentences received by von Schirach and von Neurath were too lenient. In his conclusion, the author attributed the tribunal's mercy to its rejection of continental legal theory in favor of those espoused by English Common law.⁴⁹

In the aftermath of the trial, the final commentary published in the *LA Times* came from the pen of Raymond Moley. The man who once suggested that Göring would testify against his fellow Nazis in exchange for a prison sentence wrote two columns for the newspaper several days apart assessing the American prosecution team's performance, evaluating the trial process, and examining Hjalmar Schacht. Moley's description of Schacht is of little importance save the author's portrayal of the former *Reichsbank* president as a charlatan who had deceived the tribunal as he had the international banking community during Germany's rearmament in the 1930s.⁵⁰ In his evaluation of the prosecution, Moley singled out Jackson and commended the justice for his performance despite the complexity of the conspiracy case, opposition to the trial plan, and the trial's length and tedium. As to the trial itself, the author addressed two primary criticisms of the trial: the retroactive nature of count two and the tribunal's deviation from Anglo-American legal principles. Moley asserted that, while *ex post facto* applied to the creation of the tribunal, count two was already illegal under the conditions of the Kellogg-Briand Pact. Second, Moley noted that the procedures used in the trial

⁴⁹ Polyzoides, "World Looks Askance at Nuernberg Leniency," *Los Angeles Times*, 2 October 1946.

⁵⁰ Moley, "HAIRBREADTH HJALMAR," *Los Angeles Times*, 6 October 1946.

derived from the London Charter and not from American jurisprudence. In his opinion, Moley wrote that the defendants “were given all the elements of a fair trial.”⁵¹

In his article of 2 October, *Tribune* correspondent Hal Foust repeated the assertions made in the *LA Times* article culled from the Chicago Tribune Press Service. Foust reported that, in addition to the nooses, the British had allocated twenty executioners for the task, including Henry Pierrepoint, the father of Albert Pierrepoint and a septuagenarian described by Foust as “Britain’s No. 1 hangman.”⁵² The article also featured on its front page a report on the previous day’s proceedings describing in detail the reactions of Göring, Hess, Keitel, and others to their sentencing. In addition, the *Tribune* article contained two short paragraphs noting the Soviets’ dissent.⁵³

A telling indicator of the *Tribune*’s opinion of the verdicts and the sentences imposed appeared on the publication’s front page beside Foust’s article. A cartoon with the heading “MONUMENT TO STUPIDITY” depicted a smug Göring pointing to a statue adorned with a swastika armband. Although an aura of light obscured the statue’s head, inscribed on the pedestal were the words “German Martyr” followed by a short denunciation of the trial.⁵⁴ Rather than establish the culpability of the Nazi leaders in the eyes of their countrymen, the cartoon implied that the trial had made them into folk heroes. Should any confusion arise from the newspaper’s endorsement of the cartoon’s message, an editorial appearing in the same edition dispelled such misunderstanding. As it had in its editorial of the previous November, the *Tribune*’s editorial reiterated that the

⁵¹ Moley, “JUSTICE AT NUERNBERG,” *Los Angeles Times*, 4 October 1946.

⁵² Foust, “GOERING AND 10 OTHERS TO DIE AT NUERNBERG,” *Chicago Daily Tribune*, 2 October 1946.

⁵³ *Ibid.*

⁵⁴ Unknown, “MONUMENT TO STUPIDITY,” *Chicago Daily Tribune*, 2 October 1946.

judges represented nations that were guilty of many of the same crimes as the men they had convicted. History, the *Tribune* believed, would support this assertion. The editorial concluded that the precedents established at Nuremberg stymied the growth of civilization by advancing the principle of victor's justice, regressing society to a state of barbarism.⁵⁵

Several days later, the *Tribune* published another editorial, again outlining its objections to the trial. Referring to the Foust article of 2 October, the editorial questioned both Britain's motives in supplying the hangman and its overall military prowess during the war. Noting Bavaria's desire to prosecute those acquitted at Nuremberg, the paper's editors repeated their long-held contention that German courts could have conducted the trial and obtained similar results. Instead, the editorial continued, the victorious nations had created an international tribunal whose foundation and procedures were diametrically opposed to the U.S. Constitution and American legal principles. This was not a deterrent for the American participants, the editorial argued, as Jackson and Biddle were "New Dealers" familiar with such legal degeneracy. Finally, the *Tribune* mourned the American army's participation in the upcoming executions, as it would sully its reputation by aiding in the advancement of "New Dealer" tenets and the imperial ambitions of Britain.⁵⁶

However, the executions had yet to occur. In the days following the sentencing, much of the press's coverage relating to Nuremberg focused on the behavior of the

⁵⁵ Editorial, "AGGRESSOR NATIONS," *Chicago Daily Tribune*, 2 October 1946.

⁵⁶ Editorial, "BRITAIN SUPPLIES THE HANGMAN," *Chicago Daily Tribune*, 8 October 1946.
*Author's Note: The *Tribune's* editorial requires some clarification as, at the time of its publication, Master-Sergeant John C. Woods had replaced the younger Pierrepont as the principle hangman and responsibility for carrying out the executions had fallen to the Nuremberg prison commandant, Colonel Andrus.

condemned inside the Nuremberg Prison and their appeals for clemency or alternative methods of execution. Little deviation appeared in the five publications' coverage. Only *The Times* offered any interpretation of the control council's decision. In its editorial, the newspaper asserted the appellate process represented another example of the tribunal's inherent fairness. It went on to state that only a small minority still maintained the trial had been illegal and, as the publication had in past editorials, presented its arguments to the contrary. The editorial declared that the denial of clemency was the option available to the council due to the enormity of the Nazis' crimes and that the condemned warranted no mercy, not even, referring to the requests by Jodl and Keitel that they be shot, "the mercy of a soldier's bullet."⁵⁷ Yet even while the control council deliberated on the appeals in Berlin, two events occurred stateside, one of which *The Times* had alluded to in the previous editorial, that deflected the press's attention away from Germany temporarily and presented contrasts in both the press's coverage and interpretation.

In an address at the University of Buffalo on 4 October, Robert Jackson told his audience that the precedents established at Nuremberg applied to all nations and would serve as a deterrent against future aggression. However, the justice warned that dictatorships sire belligerency and that humanity could not achieve global tranquility until all governments protected its minorities.⁵⁸ *The Times*, *The Post*, and the *LA Times* all published accounts of Jackson's speech that varied in their length and detail. While the latter two newspapers relied on the AP for their articles, Morris Kaplan of *The Times* provided the most detailed account, writing that in his speech that Jackson had drawn similarities between Nazism and the Soviet Union's dominion in Eastern Europe, an

⁵⁷ Editorial, "THE VERDICT STANDS," *The New York Times*, 11 October 1946.

⁵⁸ Associated Press, "Rules Should Apply to All, Jackson Holds," *The Washington Post*, 5 October 1946.

observation that went unreported in *The Post* and *LA Times* articles.⁵⁹ In addition, *The Times* published the entire text of Jackson's address.

The following day, the publication commented on Jackson's speech on its editorial page. In its editorial *The Times* urged the victorious nations attending the Paris Peace Conference to uphold the ideals espoused by Jackson and respect basic human rights in their treatment of Germany's former allies.⁶⁰ Contrary to the quantity of coverage found in *The Times* and, to a lesser extent, in *The Post* and *LA Times*, the *Tribune* and *The Journal* did not report on Jackson's address. Several weeks later, the *Tribune* did comment on Jackson's speech. However, in its editorial of 23 October the newspaper asked the justice rhetorically why the Soviet Union was not on trial if, as Jackson had implied in his speech, the communist nation possessed the same characteristics as Nazi Germany.⁶¹

As it had with Jackson, both *The Times* and the *Tribune* would cover the comments of another polarizing American political figure. On its front page, *The Times* reported that, in a speech made at Ohio's Kenyon College, Republican Senator Robert Taft had denounced the trial, likening it to the political trials in the Soviet Union and attributed the tribunal's creation to a draconian foreign policy that had abandoned traditional American principles. In response to a question from the audience, the senator suggested that life imprisonment for the condemned would be more appropriate than death, as the tribunal had charged them with their chief crime retroactively. The article noted that a co-speaker at the college, Professor Harold Laski, had offered a rejoinder. A representative of the

⁵⁹ Morris Kaplan, "MINORITIES' RIGHTS ARE KEY TO PEACE, JACKSON DELCARES," *The New York Times*, 5 October 1946.

⁶⁰ Editorial, "WHERE THE LAWYERS LEFT OFF," *The New York Times*, 6 October 1946.

⁶¹ Editorial, "WHAT ARE WE WAITING FOR?," *Chicago Daily Tribune*, 23 October 1946.

British Labor Party, Laski had suggested that if imprisonment were a suitable punishment, even though the proceedings were indeed *ex post facto*, then a death sentence would be equably just.⁶²

For four consecutive days, *The Times* published articles that reported reactions to Taft's assertion from various individuals and groups. The first article reported that New York City Councilman Eugene Connolly had asked Governor Thomas Dewey and other state Republican leaders to renounce Taft's position.⁶³ The following day, another article noted that Taft's speech had become a major campaign issue and reported that Governor Dewey and Irving Ives, a Republican candidate for one of the New York Senate seats, had issued a joint statement affirming the fairness of the trial. Their statement, the article related, did not mention Taft by name.⁶⁴ In the same edition, another article reported that the National Lawyers Guild and Florida Senator Claude Pepper, a Democrat, had both taken offense at Taft's remarks.⁶⁵ On 10 October, another article reported that the International Bar Association had also rejected Taft's analysis of the tribunal.⁶⁶

However, amidst Taft's political tempest, *The Times*' Washington correspondent Arthur Krock penned an opinion piece that appeared to place Taft's comments in context. Praising the senator for his courage and dedication to his values, Krock noted that Taft had not considered popular sentiments before making his opinions known.

⁶² Walter Ruch, "TAFT CONDEMS HANGING FOR NAZIS AS UNJUST VERDICT," *The New York Times*, 6 October 1946.

⁶³ Unknown, "DEWEY CHALLENGED ON TAFT STATEMENT," *The New York Times*, 7 October 1946.

⁶⁴ Unknown, "DEMOCRATS ASSAIL TAFT VIEW ON NAZIS," *The New York Times*, 8 October 1946.

⁶⁵ Unknown, "TAFT'S VIEWS ATTACKED," *The New York Times*, 8 October 1946.

⁶⁶ Unknown, "LAWYERS DEFEND NUREMBERG TRIAL," *The New York Times*, 10 October 1946.

Nonprofessionals, Krock observed, had not appreciated the splitting of legal hairs engaged in by the senator from Ohio. In his conclusion, Krock predicated that this gaffe, if indeed it was one, would likely damage Taft's presidential aspirations.⁶⁷ *The Times'* editorial board did not seem to share Krock's appreciation of Taft's ethical stance and, in an 11 October editorial, questioned the logic of the senator's assessment of the sentences. Although the editorial focused primarily on the Allied Control Council's denial of the appeals and the legitimacy of the tribunal, it observed that Admiral Raeder had asked for the death sentence instead of life imprisonment. The admiral's request, the editorial reasoned, cast doubts on Taft's contention that incarceration was more just than execution.⁶⁸

The *Tribune*, the *LA Times*, and *The Post* also printed news of Taft's speech in their publications. Published before the political firestorm had erupted, the *Chicago Daily Tribune* printed excerpts from Taft's speech but did not mention Laski's challenge to Taft's assertion that the death sentence was unjust, although the article quoted Laski when discussing Taft's views on price controls.⁶⁹ Like the *Tribune*, the *LA Times* printed news of Taft's speech before controversy had attached itself to it. However, the *LA Times* included Laski's response to Taft's view on the severity of the sentences in light of how the tribunal had reached its verdicts.⁷⁰ While it did not mention Laski, in its article *The Post* paraphrased Taft's comments and cited the Dewey-Ives statement, observing

⁶⁷ Arthur Knock, "Taft's View Unpopular," *The New York Times*, 9 October 1946.

⁶⁸ Editorial, "THE VERDICT STANDS," *The New York Times*, 11 October 1946.

⁶⁹ Unknown, "TAFT SAYS NAZI TRIALS VIOLATE U.S. PRINCIPLES," *Chicago Daily Tribune*, 5 October 1946.

⁷⁰ United Press, "Taft Calls War Trial Outrage Against Justice," *Los Angeles Times*, 6 October 1946.

that many considered Dewey and Taft the frontrunners for the 1948 Republican presidential nomination.⁷¹

Considering the dearth of its coverage throughout the trial's duration and its almost non-existent commentary directed towards matters relating to the IMT, it seems surprising that *The Journal* devoted any space to the Taft controversy. *The Journal's* editorial appeared several weeks after Taft's speech and responded to a letter sent to the publication by Clarence B. Hewes, a resident of Washington, D.C. In his letter, Hewes called the trial a farce and voiced his agreement with the position assumed by Senator Taft. Hewes expanded on Taft's allusions to Soviet totalitarianism and pointed to the Soviet Union's prewar aggression towards Finland and later occupation of the Baltic States.⁷² In its response, *The Journal* endorsed Hewes' arguments and asserted that the Soviet Union had aided the Nazi war machine in its crimes (apparently in reference to the nonaggression pact's secret codicil). In addition, the editorial suggested that the Allies' insistence on the *Reich's* unconditional surrender had eliminated any chance of the German prosecution of those indicted under the London Charter. The origin of the Allies' policy of unconditional surrender, the editorial concluded, warranted considerable study.⁷³

Although the orations of Jackson and Taft prompted additional discussion about the tribunal's legitimacy, fairness, and potential legacy, on 16 October the press's attention turned back to Nuremberg. The Trial of the Major War Criminals climaxed with Göring's suicide and the subsequent hangings of the condemned. While the five

⁷¹ Associated Press, "Dewey Takes Issue With Taft on Trials," *The Washington Post*, 8 October 1946.

⁷² Clarence B. Hewes, letter to the editor, *The Wall Street Journal*, 22 October 1946.

⁷³ Editorial, "The Nuremberg Trials," *The Wall Street Journal*, 22 October 1946.

newspapers examined in this study devoted ample coverage to the executions and the circumstances surrounding Göring's procurement of potassium cyanide, only *The New York Times* and *Chicago Daily Tribune* used this opportunity to advance their interpretations of the trial for a final time.

On 16 October, the editorial board of *The Times* characterized the deceased as weak-willed men who allowed themselves to become the tools of a hell spawn in return for personal power. Through their deaths, the editorial continued, each had atoned somewhat for his crimes by serving as a warning to others who might follow the same path. In its conclusion, the editorial warned that the international community must guard against future movements like National Socialism that utilized such a group of opportunists and sadists to advance their agendas.⁷⁴

Although the preceding editorial was the last commentary published in *The Times* that discussed the merit of the trial itself, the following day the newspaper printed an article on Jackson's reaction to Göring's suicide. In the article, Jackson declared that, by ending his life, the former *Reichsmarschall* had forfeited his potential martyrdom. Without a lasting symbol, Jackson reasoned, Nazism would not revive. The justice concluded his remarks, the article noted, by asserting that Göring's death had "killed the myth of Nazi bravery and stoicism and deep conviction."⁷⁵ While the *LA Times* and *The Post* both published accounts similar to the one found in *The Times*, neither the *Tribune* nor *The Journal* printed news of Jackson's statement.

Contrary to the opinions expressed by Jackson and in *The Times*, the *Tribune* reported that the *Army and Navy Journal* had declared the executions would encourage aggression

⁷⁴ Editorial, "THE END OF THE NAZIS," *The New York Times*, 16 October 1946.

⁷⁵ Unknown, "NAZI MYTH BROKEN, JACKSON DECLARES," *The New York Times*, 17 October 1946.

among nations rather than impede it. Regardless of the rulings made at Nuremberg, the editors of the military journal contended that, in the future, subjugated nations would fear reprisals from the victor. Therefore, the only alternative would be to build up national armaments, thus creating a global arms race. In its conclusion, the article noted that the *Army and Navy Journal* had also derided the rest of the Four Powers for not taking an active role in the trial's security or in the executions.⁷⁶ Another article published in the *Tribune* scrutinized the method of execution. Hal Foust reported that the Allied Control Council had rejected a British request for an inquiry into the execution. According to Foust, several eyewitnesses to the execution had alleged that Master-Sergeant Woods had botched the hangings, in some instances leaving several of the condemned men to strangle to death.⁷⁷ The preceding articles' inference contrasted distinctly with Jackson's assessment reported in *The Post*, the *LA Times*, and *The Times* that the executions vanquished the spectre of Nazism.

In its final commentaries on the trial, the *Tribune's* evaluations remained consistent with those adopted fifteen months earlier. One editorial repeated the publication's contention that the tribunal had applied the charge of waging an aggressive war and the conspiracy charge attached to it retroactively. In addition, the newspaper denounced the Soviet Union's participation in the trial and listed a compilation of offenses the communist nation had committed that violated the London Charter's definition of aggressive war. As it had in previous editorials, the publication prophesied that history,

⁷⁶ Chicago Tribune Press Service, "ARMY JOURNAL SAYS HANGINGS AID ARMS RACE," *Chicago Sunday Tribune*, 20 October 1946.

⁷⁷ Foust, "NAZI HANGINGS BUNGLED, SAYS BRITISH REPORT," *Chicago Daily Tribune*, 30 October 1946.

as well as the German people, would judge the proceedings harshly.⁷⁸ In its final editorial dedicated to the Trial of the Major War Criminals, the *Tribune* again summarized the grounds on which it had opposed the trial. As in the past, the editorial testified to the Soviet Union's guilt, evident by its invasions of Poland and Finland. Though the condemned had deserved their punishment (even if the authority that had prescribed it was in question), the newspaper declared that Stalin and Molotov should share a similar fate.⁷⁹

The editorials published in the *Chicago Daily Tribune* throughout the trial had eliminated all reasonable doubt as to the newspaper's disposition towards the tribunal. As will be discussed in the conclusion, the *Tribune's* attitude likely influenced its overall coverage of the trial. However, it would be both inaccurate and unfair to suggest that only Robert McCormick's publication exuded biases in its coverage of the Trial of the Major War Criminals. To varying degrees, the other newspapers examined in this study did as well.

⁷⁸ Editorial, "THE NUERNBERG BLUNDER," *Chicago Daily Tribune*, 16 October 1946.

⁷⁹ Editorial, "THE HANGMAN'S HOUR," *Chicago Daily Tribune*, 25 October 1946.

CONCLUSION

As noted in the previous chapters, the best indicator of each newspaper's position towards the trial rests in the opinions expressed in its editorials. The views expressed by their columnists, be they employed by the publication directly or carried through syndication, also contribute to the overall tone of a newspaper's coverage. The final mechanism used to gauge the tone of a newspaper's coverage of the trial -- the presence of articles reflecting the trial in a favorable or unfavorable light (such as the contrasting accounts of the Göring cross-examination) -- reinforces the positions suggested by the first two indicators. However, assigning bias to these articles is itself subjective. Nonetheless, by examining each newspaper's coverage using these three indicators, one discovers that each publication's attitude toward the IMT remained consistent throughout the trial's duration and tended to reflect the ideological leanings of each newspaper.

As discussed in chapters two and three, the quantity of coverage found in *The Times* far surpassed that of the other four newspapers and likely reflected the newspaper's commitment to publicizing the trial. Of the 415 articles relating to the proceedings, the vast majority did not contain any overt indication of bias towards or against the proceedings, although, as noted in the previous chapters, there were examples of *The Times* using softer language in those articles that cast the tribunal in a poor light. However, of the thirty-seven articles that did contain an identifiable bias, the ratio of favorable to unfavorable articles was almost four to one. Taken as a percentage, articles favorable towards the trial represented seven percent of *The Times*' total coverage. In its editorials, *The New York Times* never wavered in its endorsement of the trial. Although the publication's editors did acknowledge that the trial's design lent itself to possible abuses, this did not affect their recognition of the tribunal's legitimacy nor the proposed benefits its precedents could bestow upon humanity.

In its coverage of the trial, the *LA Times* contained fewer articles that exuded any indication of bias. Out of 220 articles reporting on the trial, only eight displayed any sense of partiality. Here, the quantitative difference between positive and negative articles was negligible. However, of the seven editorials that commented on the Nuremberg proceedings, all seven endorsed or expressed a favorable disposition toward the trial. The biggest indicator of the newspaper's attitude towards the trial lies in the columns and syndicated columns published by the newspaper. In the nine columns written about the trial specific to the publication, six endorsed the trial, one expressed some reservations about the proceedings, and two remained neutral in tone. In addition, of the six columns penned by Walter Lippmann, five presented the trial in favorable terms while one did not express an opinion at all.

Like the *LA Times*, an examination of *The Post* reveals a positive bias towards the trial in its coverage, but one so slight as to appear inconsequential. As discussed in previous chapters the editorials published in *The Washington Post* expressed a positive view of the IMT and the trial as a whole. All fourteen of *The Post's* editorials contained such sentiments. Likewise, the columns of Novar and Pusey were all favorable towards the trial. Only in Drew Pearson's *Washington Merry-Go-Round* was some reservation expressed towards the precedents established by the trial. Finally, *The Post* published two of the Lippmann columns also found in the *LA Times* that were supportive of the trial.

Second only to *The Times* in sheer quantity of coverage devoted towards the trial, the *Chicago Daily Tribune's* antipathy towards the proceedings seems evident in the articles published in the newspaper. In its coverage of the trial, those articles that presented the tribunal or the prosecution in a negative light outweighed those that were positive by a

ratio of six to one. As a percentage, negative articles comprised almost ten percent of the *Tribune's* total coverage of the trial. Coupled with the *Tribune's* editorials, the newspaper's disposition towards the trial leaves little room for misinterpretation.

Based on the Chamberlin commentary that appeared in its pages at the onset of the trial and the editorial published in October 1946, one might assume that *The Wall Street Journal* possessed a negative opinion of the Trial of the Major War Criminals. The presence of only two editorials published over a sixteen-month span does not lend itself to establishing a firm correlation between the financial journal's political ideology and its attitude towards the trial. *The Journal's* coverage of the trial adds little to the interpretation of its position due to the brevity and scarcity of information pertaining to Nuremberg found in its pages. As noted early in this study, the newspaper focused primarily on business and financial news and likely did not concern itself with the trial.¹ However, the few opinions offered by *The Journal* are consistent with its ideology.

After examining each newspaper's coverage of the Trial of the Major War Criminals from August 1945 until November 1946, it appears that a strong relationship existed between each publication's position towards the trial and its ideological position in all but *The Wall Street Journal*. Those newspapers considered traditionally moderate to liberal in their ideology, *The New York Times*, *The Washington Post*, and the *LA Times* overwhelmingly supported the trial in their editorials and in the columns printed in their respective newspapers. Conversely, the conservative *Chicago Daily Tribune* opposed the IMT throughout the trial's duration. Based on the scant editorials found in *The Journal*, a similar, if weaker, relationship existed between its opposition towards the trial and its conservative ideology. However, as discussed above, only in *The Times* and the *Tribune*

¹ Author's Note: A table detailing a breakdown of each publication's coverage of the Trial of the Major War Criminals can be found in Appendix G.

did their position towards the trial seem to influence their actual coverage of the proceedings to any significant extent.

Today, with access to twenty-four hour news services and commentary through various forms of media, accusations of bias are commonplace, especially when applied to controversial or polarizing issues. As this thesis indicates, media bias is no new invention and often serves the interests or advocates the beliefs of a medium's ownership or management. However, this is not as nefarious as it might appear. By endorsing or opposing the creation of the International Military Tribunal and the proceedings that followed, these newspapers hoped to convert the unconverted among their readership and embolden those who already shared the principles advanced by these publications. In doing so, issues arose that reflected the uncertainty of the post-war era concerning, among other things, the encroachment of national sovereignty by international organizations such as the IMT and the United Nations, and the West's continued relationship with the Soviet Union. The introduction of such issues and the discussions they generated helped define the United States during the second half of the twentieth century, affecting the world at large. So too will the ideas advanced in the news media of today eventually influence the future.

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APPENDICES

APPENDIX A

THE MORGENTHAU PLAN: APPENDIX B: PUNISHMENT OF CERTAIN WAR CRIMES AND TREATMENT OF SPECIAL GROUPS

A. *Punishment of Certain War Criminals*

(1) *Arch-criminals.*

A list of the arch-criminals of this war whose obvious guilt has generally been recognized by the United Nations shall be drawn up as soon as possible and transmitted to the appropriate military authorities. The military authorities shall be instructed with respect to all persons who are on such list as follows:

- (a) They shall be apprehended as soon as possible and identified as soon as possible after apprehension, the identification to be approved by an officer of the General rank.
- (b) When such identification has been made the person identified shall be put to death forthwith by firing squads made up of soldiers of the United Nations.

(2) *Certain Other War Criminals*

- (a) Military commissions shall be established by the Allied Military Government for the trial of certain crimes which have been committed against civilization during this war. As soon as practicable, representatives of the liberated countries of Europe shall be included on such commissions. These crimes shall include those crimes covered by the following section and such other crimes as such military commissions may be ordered to try from time to time.
- (b) Any person who is suspected of being responsible for (through the issuance of orders or otherwise), or having participated in causing the death of any human being in the following situations shall be arrested and tried promptly by such military commissions, unless prior to trial one of the United Nations has requested that such person be placed in its custody for trial on similar charges for acts committed within its territory:
 - (i) The death was caused by action in violation of the rules of war.
 - (ii) The victim was killed as a hostage in reprisal for the deeds of other persons
 - (iii) The victim met death because of his nationality, race, color, creed, or political conviction.
- (c) Any person who is convicted by the military commissions of the crimes specified in paragraph (b) shall be sentenced to death, unless the military commissions, in exceptional cases, determine that there are extenuating

circumstances, in which case other punishment may be meted out, including deportation to a penal colony outside of Germany. Upon conviction, the sentence shall be carried out immediately.

B. Detention of Certain Groups

All members of the following groups should be detained until the extent of the guilt of each individual is determined:

- (a) The S.S.
- (b) The Gestapo.
- (c) All high officials of the police, S.A. and other security organizations.
- (d) All high Government and Nazi Party Officials.
- (e) All leading public figures closely identified with Nazism.

C. Registration of Males

An appropriate program will be formulated for the re-registration as soon as possible of all males of the age of 14 or over. The registration shall be on a form and in a manner to be prescribed by the military authorities and shall show, among other things, whether or not the person registering is a member of the Nazi Party or affiliated organizations, the Gestapo, S.S., S.A., or Kraft Korps.

D. Labor Battalions

Apart from the question of established guilt for special crimes, mere membership in the S.S., the Gestapo, and similar groups will constitute the basis for inclusion into compulsory labor battalions to serve outside Germany for reconstruction purpose.

E. Dissolution of Nazi Organizations

The Nazi Party and all affiliated organizations such as the Labor Front, The Hitler Youth, The Strength-through-Joy, etc. should be dissolved and their properties and records confiscated. Every possible effort should be made to prevent any attempts to reconstitute them in underground or disguised form.

F. Prohibition on Exercise of Certain Privileges

All members of the following groups should be dismissed from police office, disenfranchised and disqualified to hold any public offices or to engage in journalist, teaching, and legal professions, or, in any managerial capacity in banking, manufacturing or trade:

- (1) The Nazi Party

- (2) Nazi sympathizers who by their words or deeds materially aided or the abetted the Nazi Program.
- (3) The Junkers.
- (4) Military and Naval officers.

G. *Junker Estates*

All Junker estates should be broken up and divided among the peasants and the system of primogeniture and entail should be abolished.

H. *Prohibition on Emigration*

- (1) A Proclamation shall be issued prohibiting any person resident in Germany from leaving or attempting to leave Germany, except with permission from the Allied Military Government.
- (2) Violation of the Proclamation shall be an offense triable by military commissions of the Allied Military Government and heavy penalties shall be prescribed, including death.
- (3) All possible steps shall be taken by the military authorities to prevent any such person from leaving (without permission).

Henry Morgenthau JR.

APPENDIX B

SUBJECT: TRIAL OF EUROPEAN WAR CRIMINALS
(BY COLONEL MURRAY C. BERNAYS, G-1)*September 15, 1944*

THE GENERAL PROBLEM

1. a. There will be many thousands of war criminals who should be tried for crimes committed all over Europe. Their offenses range from the establishment of policy at the center of the Nazi organization, down to the scattered individual acts of criminality. Some offenders are guilty as principals, some as accessories. In many cases it will be difficult to establish the individual's identity or to connect him with the particular act charged. Witnesses will be dead and scattered, and the gathering of proof will be laborious and costly. The offenders will become subject to trial under many and divergent codes and procedures. The applicable basic law, law as to justification (e.g. orders of duly constituted superiors), procedures, and rules of evidence will vary from jurisdiction to jurisdiction. The paper work will be enormous, the liaison and coordination singularly difficult.
b. Undoubtedly, the Nazis have been counting on the magnitude and ingenuity of their offenses, the number of the offenders, the law's complexities, and delay and war weariness as major defenses against effective prosecution. Trial on an individual basis, and by old modes and procedures, will go far to realize the Nazi hopes in this respect.

THE MINORITIES PROBLEM

2. a. Many of the Axis atrocities were committed before there was a state of war. These cannot be categorized as war crimes under existing law.
b. Some of the worst outrages were committed by Axis powers against their own nationals on racial, religious, and political grounds. As to these, the offenders can plead justification under domestic law. Also, to call these atrocities war crimes would set the precedent of an international right to sit in judgment on the conduct of the several states toward their own nationals. This would open the door to incalculable consequences and present grave questions of policy.
c. However, widely publicized statements of the highest leaders have been interpreted as assuring that the above atrocities would be prosecuted by the United Nations as war crimes.
3. a. It may be expected that even though the above acts cannot be reached as war crimes, the Axis authorities who committed them will be punishable in many cases with equal or greater severity for offenses which are war crimes. This, however, will not necessarily cover all the cases, and in any event it will not satisfy the insistence of the minority groups that recognition should be given to the criminal character of the specific acts and policies which they complain.

- b. The alternative has been suggested of bringing pressure to bear on successor Governments in the Axis countries to punish the offenders through their own legal processes. Even if all successor Governments should be so inclined, and should be able to do so under their several legal systems, it is hardly likely that all of them can be counted on to be as vigorous and effective as they should be. Furthermore, such a course would not meet the demand that the United Nations make good their apparent assurance that these acts would be stamped as criminal by international judgment, and punished accordingly.
4. To let these brutalities go unpunished will leave millions of persons frustrated and disillusioned. The fact that these acts are believed to be outside the jurisdiction of the United Nations War Crimes Commission as presently constituted has already aroused vigorous protest. Strong pressure is being brought upon the United States and British Governments by organized Jewish groups, representing their co-religionists and undoubtedly also expressing the views of many others who are not of their faith, to have these acts categorized and treated as war crimes. It must be anticipated that the pressure will grow stronger with time.

DEFICIENCIES OF CERTAIN SUGGESTED SOLUTIONS

5. Perhaps because of the apparently prohibitive complexities involved, the suggestion has been made that when the arch-Nazis (Hitler, Himmler, *et al.*) are apprehended and authoritatively identified, they be executed out of hand. The justification is, presumably, that proof of their guilt would be the merest formality. However, this suggestion would not solve the problem of punishing the thousands of less outstanding culprits. Furthermore, it would do violence to the very principles for which the United Nations have taken up arms, and furnish apparent justification for what the Nazis themselves have taught and done. It would also help the Nazis elevate Hitler to martyrdom. The suggested procedure would taint an essential act of justice with false color of vindictiveness.
6. The alternative suggestion has been made that the offenders be given "streamlined" trials. The intention, presumably, would be to limit the proof, perhaps to the extent of keeping it down to the bare essentials of a *prima facie* case with regard to the particular atrocities charged. This could be done without injuring the substance of justice. However, it would not solve the problems discussed in the preceding sections.
7. The basic difficulty with the suggestions heretofore considered is in the approach. It will never be possible to catch and convict every Axis war criminal, or even any great number of them, under the old concepts and procedures. Even if this could be done it would not, of itself, be enough. The ultimate offense, for example, in the case of Lidice, is not alone the obliteration of the village, but even more, the assertion of the right to do it. The ordinary thug does not defend on the ground that thuggery is noble; he only contends that the police have arrested the wrong man. Behind each Axis war criminal, however, lies the basic criminal instigation of the Nazi doctrine and policy. It is the guilty nature of this instigation that must be established, for only thus will the conviction and punishment of the individuals concerned achieve their true moral and juristic significance. In turn, this approach throws light on the nature

of the individual's guilt, which is not dependent on the commission of specific criminal acts, but follows inevitably from the mere fact of voluntary membership in organizations devised solely to commit such acts.

BASIC OBJECTIVES

8.
 - a. The punishment of Axis war criminals should aim at three prime objectives: *first*, the establishment of a solemnly considered international judgment that alleged high interests of state are not acceptable as justification for national crimes of violence, terrorism, and the destruction of peaceful populations; *second*, bringing home to the world the realities and menace of racism and totalitarianism, and *third*, arousing the German people to a sense of their guilt, and realization of their responsibility for the crimes committed by their government.
 - b. If these objectives are not achieved, Germany will simply have lost another war. The German people will not know the barbarians they have supported, nor will they have any understanding of the criminal characters of their conduct and the world's judgment upon it. The Fascist potential will thus remain undiminished both in Germany and elsewhere, and its scope unimpaired. If, on the other hand, the approach suggested herein is adopted, the victory can be turned to more valuable use than merely putting off the Fascist menace to another day.

PROPOSED SOLUTION

9. The following is therefore recommended for consideration:
 - a. The Nazi Government and its Party and State agencies, including the SA, SS, and Gestapo, should be charged before an appropriately constituted international court with conspiracy to commit murder, terrorism, and the destruction of peaceful populations in violation of the laws of war.
 - b. For the purposes of trial before the above court, the prosecuting Nations should bring to the bar only such individual defendants, considered to be representative of the defendant organizations, as they elect.
 - c. The proceedings should be public and widely publicized, and the evidence should be full enough to prove the guilty intent (Nazi doctrine and policy) as well as the criminal conduct (atrocious acts in violation of the laws of war).
 - d. The judgment should adjudicate:
 - (1) That the Nazi Government and its mentioned agencies are guilty as charged.
 - (2) That every member of the Government and organizations on trial is guilty of the same offense. Such adjudication of guilt would require no proof that the individuals affected participated in any overt act other than membership in the conspiracy.
 - e. Sentence would be passed by the court on the individual defendants before it.
 - f. Thereafter, every member of the mentioned Government and organizations would be subject to arrest, trial and punishment in the national courts of the several United Nations. Proof of membership, without more, would establish guilt of participation in the mentioned conspiracy, and the individual would be punished in the discretion of the court. Proof of the commission of other criminal acts would subject the individual to additional punishments conformably to local law.

10. It is particularly noted, in connection with the foregoing:
 - a. That in view of the nature of the charge, everything done in furtherance of the conspiracy from the time of its inception would be admissible, including domestic atrocities against minority groups within Germany, and domestic atrocities induced or procured by the German Government to be committed by other Axis Nations against their respective nationals.
 - b. That once the conspiracy is established, each act of every member thereof during its continuance and in furtherance of its purposes would be imputable to all other members thereof.

APPENDIX C

MEMORANDUM FOR THE PRESIDENT, SUBJECT: TRIAL AND PUNISHMENT
OF NAZI WAR CRIMINALS

[Washington,] January 22, 1945.

MEMORANDUM FOR THE PRESIDENT

Subject: Trial and Punishment of Nazi War Criminals.

This memorandum deals with ways and means for carrying out the policy regarding the trial and punishment of Nazi criminals, as established in the statements on that subject which are annexed (Tabs A to F).

I. THE MOSCOW DECLARATION

In the Moscow Declaration (Tab D) the United Kingdom, the United States, and the Soviet Union took note of the atrocities perpetrated by the Germans and laid down the policy: (1) that those German officers and men who have been responsible for or have taken a consenting part in these atrocities "will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of those liberated countries and of the free governments which will be created therein": and (2) that the above declaration "is without prejudice to the case of the major war criminals, whose offenses have no particular geographical localization and who will be punished by the joint decision of the Governments of the Allies."

II. UNITED NATIONS WAR CRIMES COMMISSION

The United Nations War Crimes Commission is located in London, and consists of representatives of some fifteen of the United Nations. The Soviet Government is not a member.

This Commission has been charged with the collection of lists of the criminals referred to, the recording of the available supporting proof, and the making of recommendations as to the tribunals to try and the procedure for trying such criminals. The Commission has no investigative or prosecuting authority or personnel. It has no authority to try offenders of any kind.

The War Crimes Commission receives its lists of war criminals from the investigating authorities, if any, set up the respective United Nations. The first unofficial meeting of the Commission was held in London on October 26, 1943, and the first official meeting was held there on January 18, 1944. Up to this time, the cases of approximately 1,000 offenders have been docketed with the Commission. The labors of the Commission have not resulted in any governmental agreement as to the tribunals to try or the procedures for trying war criminals.

The Commission has been widely and publicly criticized for the paucity of the results of its work. In recent months its activities have been marked by dissensions. The British representative, who was also Chairman of the Commission, and the Norwegian member, have resigned.

III. SCOPE AND DIMENSIONS OF THE WAR CRIMES PROBLEM

The crimes to be punished. The criminality of the German leaders and their associates does not consist solely of individual outrages, but represents the result of a systematic and planned reign of terror within Germany, in the satellite Axis countries, and in the occupied countries of Europe. This conduct goes back at least as far as 1933, when Hitler was first appointed Chancellor of the Reich. It has been marked by mass murders, imprisonments, expulsions and deportations of populations; the starvation, torture and inhuman treatment of civilians; the wholesale looting of public and private property on a scale unparalleled in history; and, after initiation of "total" war, its prosecution with utter and ruthless disregard for the laws and customs of war.

We are satisfied that these atrocities were perpetrated in pursuance of a premeditated criminal plan or enterprise which either contemplated or necessarily involved their commission.

The criminals to be punished. The outstanding offenders are, of course, those leaders of the Nazi Party and German Reich who since January 30, 1933, have been in control of formulating and executing Nazi policies.

In addition, the Nazi leaders created and utilized a numerous organization for carrying out the acts of oppression and terrorism which their program involved. Chief among the instrumentalities used by them are the SS, from the personnel of which the Gestapo is constituted, and the SA. These organizations consist of exactingly screened volunteers who are pledged to absolute obedience. The members of these organizations are also the personnel primarily relied upon to carry on postwar guerilla and underground operations.

IV. DIFFICULTIES OF AN EFFECTIVE WAR CRIMES PROGRAM

Difficulties of identification and proof. The names of the chief German leaders are well known, and the proof of their guilt will not offer great difficulties. However, the crimes to be punished have been committed upon such a large scale that the problem of identification, trial and punishment of their perpetrators presents a situation without parallel in the administration of criminal justice. In thousands of cases, it will be impossible to establish the offender's identity or to connect him with the particular act charged. Witnesses will be dead, otherwise incapacitated and scattered. The gathering of proof will be laborious and costly, and the mechanical problems involved in uncovering and preparing proof of particular offenses one of appalling dimensions. It is evident that only a negligible minority of the offenders will be reached by attempting to try them on the basis of separate prosecutions for their individual offenses. It is not unlikely, in fact, that the Nazis have been counting on just such considerations, together with delay and war weariness, to protect them against punishment for their crimes if they lost the war.

Legal Difficulties. The attempt to punish the Nazi leaders and their association for all of the atrocities committed by them also involves serious legal difficulties. Many of those atrocities, as noted in your statement on the subject of prosecution dated 24 March 1944 (Tab E), were "begun by the Nazis in the days of peace and multiplied by them a hundred times in times of war." These pre-war atrocities are neither "war crimes" in the technical sense, nor offenses against international law; and the extent to which they may have been in violation of German law, as changed by the Nazis, is doubtful. Nevertheless, the declared policy of the United Nations is that these crimes, too, shall be punished; and the interests of postwar security and a necessary rehabilitation of German peoples, as well as the demands of justice, require that this be done.

V. RECOMMENDED PROGRAM

After Germany's unconditional surrender, the United Nations could, if they elected, put to death the most notorious Nazi criminals, such as Hitler or Himmler, without trial or hearing. We do not favor this method. While it has the advantages of a sure and swift disposition, it would be violative of the most fundamental principles of justice, common to all the United Nations. This would encourage the Germans to turn these criminals into martyrs, and, in any event, only a few individuals could be reached in this way.

We think that the just and effective solution lies in the use of the judicial method. Condemnation of these criminals after a trial, moreover, would command maximum public support in our own times and receive the respect of history. The use of the judicial method will, in addition, make available for all mankind to study in future years an authentic record of Nazi crimes and criminality.

We recommend the following:

The German leaders and the organizations employed by them, such as those referred to above (SA, SS, Gestapo), should be charged both with the commission of their atrocious crimes, and also with joint participation in a broad criminal enterprise which included and intended these crimes, or was reasonably calculated to bring them about. The allegation of the criminal enterprise would be so couched as to permit full proof of the entire Nazi plan from its inception and the means used in its furtherance and execution, including the prewar atrocities and those committed against their own nationals, neutrals, and stateless persons, as well as the waging of an illegal war of aggression with ruthless disregard for international law and the rules of war. Such a charge would be firmly founded upon the rule of liability, common to all penal systems and included in the general doctrines of the laws of war, that those who participate in the formulation and execution of a criminal plan involving multiple crimes are jointly liable for each of the offenses committed and jointly responsible for the acts of each other. Under such a charge there are admissible in evidence the acts of any of the conspirators done in furtherance of the conspiracy, whether or not these acts were in themselves criminal and subject to separate prosecution as such.

The trial of this charge and the determination of the guilty parties would be carried out in two stages:

The United Nations would, in the first instance, bring before an international tribunal created by Executive Agreement, the highest ranking German leaders to a number fairly representative of the groups and organizations charged with complicity in the basic criminal plan. Adjudication would be sought not only of the guilt of those individuals physically before the court, but also of the complicity of the members of the organizations included within the charge. The court would make findings adjudicating the facts established, including the nature and purposes of the criminal plan, the identity of the groups and organizations guilty of complicity in it, and the acts committed in its execution. The court would also sentence those individual defendants physically before it who are convicted.

The above would complete the mission of this international tribunal.

Thereafter, there would be brought before occupation courts the individuals not sent back for trial under the provisions of the Moscow Declaration, and members of the organizations who are charged with complicity through such memberships, but against whom there is not sufficient proof of specific atrocities. In view of the nature of the charges and the representative character of the defendants who were before the court in

the first trial, the findings of that court should justly be taken to constitute a general adjudication of the criminal character of the groups and organizations referred to, binding upon all members thereof in their subsequent trials in occupation courts. In these subsequent trials, therefore, the only necessary proof of guilt of any particular defendant would be his membership in one of these organizations. Proof would also be taken of the nature and extent of the individual's participation. The punishment of each defendant would be made appropriate to the facts of his particular case. In appropriate cases, the penalty might be imprisonment at hard labor instead of the death penalty, and the offenders could be worked in restoring the devastated areas.

Individual defendants who can be connected with specific atrocities will be tried and punished in the national courts of the countries concerned, as contemplated in the Moscow Declaration.

VI. NATURE AND COMPOSITION OF TRIBUNALS

We favor the trial of the prime leaders by an international military commission or military court, established by Executive Agreement of the heads of State of the interested United Nations. This would require no enabling legislation or treaty. If deemed preferable the tribunal could be established by action of the Supreme Authority (Control Council for Germany).

The court might consist of seven members, one each to be appointed by The British Commonwealth, the United States, the Soviet Union and France, and three to be appointed by agreement among the other United Nations who become parties to the proposed procedure.

The court may consist of civilian or military personnel, or both. We would prefer a court of military personnel, as being less likely to give undue weight to technical contentions and legalistic arguments.

The subsequent trials would be had, as noted, in occupation courts; or in the national courts of the country concerned or in their own military courts; or, if desired, by international military courts.

VII. PREPARATION OF CASE

A successful prosecution of the basic charge will manifestly depend upon early, careful, and thorough compilation of the necessary evidence. This is particularly important with regard to so much of the case as involves the basic criminal plan. Success will depend, further, upon cooperative action in this regard among the interested United Nations, and the early establishment of a competent executive and technical staff to carry out the project.

In our opinion, the United Nations War Crimes Commission cannot be satisfactorily employed for this purpose, and having performed its mission, may now be dissolved.

We recommend that there be set up a full time executive group consisting of one military representative each of the British Commonwealth, the United States, the Soviet Union, and France. This group should have under it an adequate staff of attorneys and research personnel to search out the available data, analyze them, prepare the charges to conform to the proof, and arrange the evidence for presentation to the international military tribunal.

VIII. SOVIET ATTITUDE

The Soviet attitude, we believe, is indicated in the Note of M. Molotov attached hereto as Tab F. The position taken therein is that the Soviet Union is ready to support all practical measures on the part of the Allied and friendly governments in bringing the Hitlerites and their accomplices to justice, and favors their trial before "the courts of the special international tribunal" and their punishment in accordance with applicable criminal law.

IX. BRITISH ATTITUDE

In an *Aide-Mémoire* from the British Embassy to the Department of State dated October 30, 1944, the British Foreign Office indicates that it is prepared to agree and to cooperate in establishing Mixed Military Tribunals to deal with cases which for one reason or another could not be tried in national courts. This would appear, according to the *Aide-Mémoire*, to include those cases where a person is accused of having committed war crimes against the nationals of several of the United Nations.

APPENDIX D

EXECUTIVE AGREEMENT RELATING TO THE PROSECUTION OF EUROPEAN
AXIS WAR CRIMINALS

1. In accordance with the Moscow Declaration of October 30, 1943, concerning the responsibility of the Nazis and Hitlerites for atrocities and crimes in violation of International Law, and in accordance with other statements of the United Nations regarding the punishment of those who have committed, been responsible for, or taken a consenting part in, such atrocities and crimes, the Government of the Union of Soviet Socialist Republics, the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Provisional Government of the French Republic, acting by their duly authorized representatives, concluded the following agreement to which the adherence of all members of the United Nations is provided for, in order to provide the necessary practical measures for the prompt prosecution and trial of the major war criminals of the European Axis Powers, including the groups and organizations responsible for or taking a consenting part in the commission of such crimes and in the execution of criminal plans.

2. All members of the United Nations shall be invited by the Government of the United Kingdom, acting on behalf of the other Signatories hereto, to adhere to this Agreement. Such adherence shall in each case be notified to the Government of the United Kingdom, which shall promptly inform the other parties to this agreement.

3. The Signatories agree that the Control Council for Germany shall establish policies and procedures governing (a) the return to the scene of their crimes of persons in Germany charged with criminal offenses, in accordance with the Moscow Declaration, and (b) the surrender of persons within Germany in the custody of any of the Signatories who are demanded for prosecution by any party to this Agreement.

4. The parties to this Agreement agree to bring to trial before an International Military Tribunal, in the name, of their respective peoples, major criminals, including groups and organizations referred to in Article 1. To this end the Soviet Union, the United States, the United Kingdom, and France have each designated a representative to act as its Chief of Counsel. The Chiefs of Counsel shall be responsible for determining, preparing the charges against, and bringing to trial the persons and organizations so to be tried.

5. The Soviet Union, the United States, the United Kingdom, and France shall also promptly designate representatives to sit upon an International Military Tribunal which shall be charged with trying such persons, groups, and organizations.

6. There is hereby adopted the Annex to this instrument which (a) declares applicable International Law and specifies acts constituting criminal violations of International Law, (b) sets out the powers and duties of the Chiefs of Counsel, (c) provides for the establishment, jurisdiction, procedures, and powers of an International Military Tribunal, and (d) makes provision for the punishment of those convicted before such International Military Tribunal.

Annex

1. This Annex is adopted pursuant to the Executive Agreement made this day by the Union of Soviet Socialist Republics, the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Provisional Government of the French Republic, which Agreement provides for the adherence thereto of all members of the United Nations who may elect so to adhere.

2. The purpose of this Annex, in pursuance of the aforesaid Executive Agreement, is to make detailed provisions for the necessary practical means and measures to carry out the declaration issued at Moscow on October 30, 1943, and other statements of the United Nations on the question of punishment of war criminals insofar as they relate to the trial and punishment of major war criminals.

3. To this end this Annex (a) declares applicable International Law and specifies acts constituting criminal violations of International Law, (b) sets out the powers and duties of the Chiefs of Counsel for the purpose of bringing the major war criminals, including groups and organizations, to trial for their criminal violations of International Law, (c) provides for the establishment, the jurisdiction, procedures, and powers of the International Military Tribunal to be established for the purpose of trying such criminals for their crimes, and (d) makes provision for the punishment of those convicted before such International Military Tribunal.

4. For convenience, (a) the four Signatories will sometimes be referred to as "the Signatories," (b) the members of the United Nations adhering hereto as provided in the preceding Article will sometimes be referred to as "the Adherents," and (c) the Signatories and all Adherents will sometimes be collectively referred to as "the parties to this Agreement."

5. The Tribunal shall be bound by this declaration of the Signatories that the following acts are criminal violations of International Law:

(1) Violations of the laws, rules, and customs of war. Such violations shall include, but shall not be limited to, mass murder and ill-treatment of prisoners of war and civilian populations and the plunder of such populations.

(2) Launching a war of aggression.

(3) Invasion or threat of invasion of, or initiation of war against, other countries in breach of treaties, agreements or assurances between nations, or otherwise in violation of International Law.

(4) Entering into a common plan or enterprise aimed at domination over other nations, which plan or enterprise included or intended, or was reasonably calculated to involve, or in its execution did involve, the use of unlawful means for its accomplishment, including any or all of the acts set out in sub-paragraphs (a) to (e) above or the use of a combination of such unlawful means with other means.

(5) Atrocities and persecutions and deportations on political, racial, or religious grounds, in pursuance of the common plan or enterprise referred to in subparagraph (d) hereof, whether or not in violation of the domestic law of the country where perpetrated.

"International law" shall be taken to include treaties, agreements, and assurances between nations and the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience.

THE INTERNATIONAL MILITARY TRIBUNAL

6. There shall be set up by the Signatories an International Military Tribunal which shall have jurisdiction to hear and determine any charges presented pursuant to Article 10. Such International Military Tribunal shall consist of four members, each with an alternate, to be appointed as follows: one member and one alternate each by the Soviet Union, the United States, the United Kingdom and France. The alternate, so far as practicable, shall be present at the sessions of the Tribunal. The presiding officer shall be selected by vote of a majority of the members of the Tribunal, and if they are unable to agree, the respective appointees of each of the Signatories shall preside in rotation on successive days.

PROVISIONS FOR BRINGING DEFENDANTS TO TRIAL

7. The parties to this Agreement agree to bring to trial before the International Military Tribunal at -----or such other place as the parties may unanimously agree in the names of their respective peoples, the major criminals, including groups and organizations, referred to in Article 2.

8. Chiefs of Counsel appointed by the Signatories shall be charged with:

(1) determining the persons, groups, and organizations against whom in their judgment there exists sufficient proof of criminal violations of International Law set out in Article 5 above to warrant their being brought to trial before the International Military Tribunal;

(2) preparing the charges against such persons and organizations;

(3) determining the proof which in their judgment has sufficient probative value to be offered in evidence against any or all such persons, groups and organizations;

(4) instituting and conducting before the International Military Tribunal prosecutions of such persons, groups and organizations.

Determination of the matters set out in sub-paragraphs (a) through (d) above shall be by agreement of the Chiefs of Counsel, provided that any Chief of Counsel may (1) bring to trial before such International Military Tribunal any person in the custody of his Government or of any Government which consents to the trial of such person, and any

group or organization, representative members of which are in the custody of his Government, if, in his judgment such person, group, or organization has committed any criminal violation of International Law defined in Article 6 hereof; and (2) introduce any evidence which in his judgment has probative value relevant to the issues raised by the charges being tried.

9. The Chiefs of Counsel shall also be charged with recommending rules of procedure for adoption by the International Military Tribunal.

CONSTITUTION OF TRIBUNAL

10. The International Military Tribunal shall have the power (a) after receiving recommendations of the Chiefs of Counsel, to establish its own rules of procedure, which shall not be inconsistent with the provisions of this Agreement; (b) to summon witnesses, including defendants, and to require their attendance and testimony; (c) to require the production of documents and other evidentiary material; (d) to administer oaths; (e) to appoint special masters and other officers to take evidence, and to make findings, except findings of guilt, or certify summaries of evidence to the International Military Tribunal whether before or during the trial, and (f) generally to exercise in a manner not inconsistent with the provisions of this Agreement plenary authority with respect to the trial of charges brought pursuant to this Agreement. Its judgment of guilt or innocence shall be final and not subject to revision.

11. There shall be lodged with the Court prior to, the commencement of the trial an indictment, supported by full particulars, specifying in detail the charges against the defendants being brought to trial. No proof shall be lodged with the Court except at the trial, and copies of any matters to be introduced in writing shall be furnished the defendant prior to their introduction.

12. In the event of the death or incapacity of any member of the International Military Tribunal, his alternate shall sit in his stead without interruption of the proceedings. All actions and decisions shall be taken by majority vote of the members.

13. In the conduct of the trial, questions may be put by each Chief of Counsel, or his representative, or by any member of the Tribunal, in his own language, and shall be translated and communicated to the witness, the defendants, and each member of the Tribunal in his own language. The witness may answer in his own language, and the answers will be translated in like manner. Written matter introduced in evidence shall be translated into the languages of the defendants and of each of the members of the Tribunal. A record of the trial will be kept in the language of each of the members of the Tribunal and in German, and each such record shall be an official record of the proceedings.

FAIR TRIAL FOR DEFENDANTS

14. In order to insure fair trial for defendants the following procedure is established:

(1) Reasonable notice shall be given to the defendants of the charges against them and of the opportunity to defend. Such notice may be actual or constructive. The Tribunal shall determine what constitutes reasonable notice in any given instance.

(2) The defendants physically present before the Tribunal will (1) be furnished with copies translated into their own language, of any indictment, statement of charges, or other document of arraignment upon which they are being tried; (2) be given fair opportunity to be heard in their defence and to have the assistance of counsel. The Tribunal shall determine to what extent and for what reasons proceedings against defendants may be taken without their presence.

SUBSTANTIVE PROVISIONS FOR LIABILITY AND DEFENCE

15. In the trial, the Tribunal shall apply the general rule of liability that those who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and responsible for the acts of each other.

16. Any defence based upon the fact that the accused is or was the head or purported head or other principal official of a State is legally inadmissible and will not be entertained.

17. The fact that a defendant acted pursuant to order of a superior or to government sanction shall not constitute a defense per se, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

PROVISIONS REGARDING PROOF

18. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and nontechnical procedures and shall admit any evidence which it deems to have probative value. It shall employ with all possible liberality simplifications of proof, such as but not limited to: requiring defendants to make written proffers of proof; making extensive use of judicial notice; receiving sworn or unsworn statements of witnesses, depositions, recorded examinations before or findings of military or other tribunals, copies of official reports, publications and documents or other evidentiary materials and all such other evidence as is customarily received by international tribunals.

19. The Tribunal shall (a) confine the trial strictly to an expeditious hearing of the issues raised by the charges, (b) take strict measures to prevent any action which will cause unreasonable delay and rule out irrelevant issues of any kind whatsoever, (c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any defendant or his counsel from some or all further proceedings but without prejudice to the determination of the charges.

PUNISHMENT

20. Defendants brought to trial before the Tribunal shall, upon conviction, suffer death or such other punishment as shall be determined by the Tribunal to be just.

21. The sentences shall be carried out in accordance with written orders of the Control Council, and the Control Council may at any time reduce or otherwise alter the sentences but may not increase the severity thereof.

TRIAL OF GROUPS OR ORGANIZATIONS

22. Groups or organizations, official or unofficial may be charged before the Tribunal with criminal acts or with complicity therein by producing before the Tribunal and putting on trial such of their number as the Tribunal may determine to be fairly representative of the group or organization in question. Upon conviction of a group or an organization, the Tribunal shall make written findings and enter written judgment on the charges against such group or organization and the representative members on trial.

23. Upon conviction of any group or organization, any party to this Agreement may bring charges against any person for participation in its criminal activities pursuant to the provisions of Article 15 hereof before any occupation or other Tribunal established by it. In any such trial the findings of the International Military Tribunal as to the criminality of the group or organization shall be binding upon the occupation or other Tribunal. Upon proof of membership in such group or organization, such person shall be deemed to have participated in and be guilty of its criminal activities unless he proves the absence of voluntary participation. A person so convicted shall suffer death or such other punishment as the Tribunal may deem just in light of the degree of his culpability.

24. Any party to this agreement may, either in a proceeding described in Paragraph 23 or in an independent proceeding, charge any person, before an occupation or other Tribunal, with any crime other than the crimes referred to in Paragraph 23, and such Tribunal may, upon his conviction, impose upon him for such crime punishment independent of and additional to the punishment imposed for participation in the criminal activities of such group or organization.

EXPENSES

25. The expenses of the International Military Tribunal shall be charged by the Signatories against the funds allotted for maintenance of the Control Council, and the expenses of the Chiefs of Counsel shall be borne by the respective Signatories.

RETURN OF OFFENDERS TO THE SCENE OF THEIR CRIMES

26. The Signatories agree that the Control Council for Germany shall establish policies and procedures governing (a) the return of persons in Germany charged with criminal offenses to the scene of their crimes in accordance with the Moscow Declaration

and (b) the surrender of persons within Germany in the custody of any of the Signatories who are demanded for prosecution by any party to this Agreement.

Memorandum to Conference of Representatives of the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and the Provisional Government of France, Submitted by the United States To Accompany

Redraft of Its Proposal

The Moscow Declaration left the higher German authorities whose crimes were not geographically localized to be punished by "joint decision" of the powers involved.

The United States proposal is based on the idea that the "joint decision" should be reached through hearings having the characteristics of a judicial inquiry rather than of a political fiat. Its underlying assumptions are that decisions should be reached through an Inter-Allied Tribunal, and that it should be done through a main trial of the principal individuals and the organizations which they represent. It is assumed that the trial could take place at a single fixed place, and that the trial would be by some procedure neither our own nor that of any one country but acceptable to our public as a fair judicial determination of the fact of guilt.

We do not propose adoption of our American Court procedure. One of the chief reasons for suggesting a Military Commission is that it affords opportunity for special procedures adapted to the unprecedented nature of our case.

The United States, as the memorandum submitted with the original proposal at San Francisco indicates, has conceived of this case as a broad one. It must be borne in mind that Russian, French, English, and other European peoples are familiar with the Hitlerite atrocities and oppressions at first-hand. Our country, three thousand miles away, has known of them chiefly through the press and radio and through the accusations of those who have suffered rather than through immediate experience. German atrocities in the last war were charged. The public of my country was disillusioned because most of these charges were never authenticated by trial and conviction. If there is to be continuing support in the United States for international measures to prevent the regrowth of Naziism, it is necessary now to authenticate, by methods -which the American people will regard as of the highest accuracy, the whole history of this Nazi movement, including its extermination of minorities, its aggressions against neighbors, its treachery and its barbarism.

For this reason, the American representatives conceive of this case as more than the trial of many particular offenses and offenders. It involves our whole attitude towards the waging of aggressive war, which we think, as Professor Trainin has pointed out in his book, is an international crime. It is mainly on this basis that our country justified, prior to our own entry into the war, its lend-lease and other policies of support for the anti-Nazi cause.

We have not envisaged this case as a trial of isolated criminal acts. We envisaged it as a trial of the master planners in which the criminality consists of making and executing

the master plan to attack the international peace. We are, of course, interested in proving the many manifestations of that plan in local offenses and terrorisms, but in this main case we are interested in establishing them as proof of the design. We are of course interested in bringing all these individual criminals to justice in other appropriate proceeding.

The United States proposal, therefore, contemplates a single main trial of representative Nazi leaders and of the organizations which were the important instrumentalities of the Hitlerite movement. This is what we consider the function of the main international tribunal. It may be necessary, subsequently, to have other trials of individuals, but it will not be necessary to try again the questions decided by the main trial.

We are ready to consider appropriate procedures to this end drawn from Russian, British, French, American, or any other, experience. The United States would not welcome a situation in which I would be expected to participate in a large number of individual trials, held in various parts of Europe, to try particular outrages. My present organization is not set up for that work. My function is to get at the groups which have master-minded the attack, by such barbaric methods, on the peace of the world. Our occupation courts will of course handle appropriate individual cases.

It would seem that the primary reason for an International Tribunal is the fact that many local trials, while useful in themselves, will fail to disclose the general design which is back of the multitude of local offenses and that, therefore, the attention of the International trial must be focused on the broader aspects of the Hitlerite conspiracy.

We submit a redraft of our proposal attempting to retain its essential purposes and yet to meet as far as possible the suggestions of the Russian, French, and British memoranda.

I call attention to the official statement of the responsibility which the United States conceives it has for the trial of prisoners in its possession as outlined in my report to the President, a copy of which we have provided. By reason of the President's unqualified endorsement of it, the essentials it states represent the President's views as well as my own.

ROBERT H. JACKSON
Chief of Counsel for the United States of America.
30 June 1945.

APPENDIX E

AGREEMENT AND CHARTER

AGREEMENT by the Government of the UNITED STATES OF AMERICA, the Provisional Government of the FRENCH REPUBLIC, the Government of the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND and the Government of the UNION OF SOVIET SOCIALIST REPUBLICS for the Prosecution and Punishment of the MAJOR WAR CRIMINALS of the EUROPEAN Axis

WHEREAS the United Nations have from time to time made declarations of their intention that War Criminals shall be brought to justice;

AND WHEREAS the Moscow Declaration of the 30th October 1943 on German atrocities in Occupied Europe stated that those German Officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

AND WHEREAS this Declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

Now THEREFORE the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Article 1. There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Article 2. The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this Agreement, which Charter shall form an integral part of this Agreement.

Article 3. Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The Signatories shall also use their best endeavors to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

Article 4. Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Article 5. Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

Article 6. Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any allied territory or in Germany for the trial of war criminals.

Article 7. This Agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any Signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

IN WITNESS WHEREOF the Undersigned have signed the present Agreement.

DONNE [sic] in quadruplicate in London this 8th, day of August 1945 each in English, French and Russian, and each text to have equal authenticity.

For the Government of the United States of America
ROBERT H. JACKSON

For the Provisional Government of the French Republic
ROBERT FALCO

For the Government of the United Kingdom of Great Britain and Northern Ireland
JOWITT C.

For the Government of the Union of Soviet Socialist Republics
I. NIKITCHENKO
A. TRAININ

Charter of the International Military Tribunal

I. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 1. In pursuance of the Agreement signed on the 8th, day of August 1945 by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

Article 2. The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place.

Article 3. Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel. Each Signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a Trial, other than by an alternate.

Article 4.

(a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.

(b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.

(c) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive: provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

Article 5. In case of need and depending on the number of the matters to be tried, other Tribunals may be set up; and the establishment, functions, and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II. JURISDICTION AND GENERAL PRINCIPLES

Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which, there shall be individual responsibility:

(a) **CRIMES AGAINST PEACE:** namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) WAR CRIMES: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.(1)

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7. The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8. The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 9. At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10. In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Article 11. Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of and additional to the

punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

Article 12. The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

Article 13. The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

III. COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

Article 14. Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors shall act as a committee for the following purposes:

(a) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,

(b) to settle the final designation of major war criminals to be tried by the Tribunal,

(c) to approve the Indictment and the documents to be submitted therewith,

(d) to lodge the Indictment and the accompanying documents with the Tribunal,

(e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.

The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

Article 15. The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

(a) investigation, collection and production before or at the Trial of all necessary evidence,

(b) the preparation of the Indictment for approval by the Committee in accordance with paragraph (c) of Article 14 hereof,

- (c) the preliminary examination of all necessary witnesses and of the Defendants,
- (d) to act as prosecutor at the Trial,
- (e) to appoint representatives to carry out such duties as may be assigned to them,

to undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the Trial.

It is understood that no witness or Defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent.

IV. FAIR TRIAL FOR DEFENDANTS

Article 16. In order to ensure fair trial for the Defendants, the following procedure shall be followed:

(a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at a reasonable time before the Trial.

(b) During any preliminary examination or trial of a Defendant he shall have the right to give any explanation relevant to the charges made against him.

(c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

(d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of Counsel.

(e) A defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defense, and to cross-examine any witness called by the Prosecution.

V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

Article 17. The Tribunal shall have the power

(a) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them,

(b) to interrogate any Defendant,

(c) to require the production of documents and other evidentiary material,

(d) to administer oaths to witnesses,

(e) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Article 18. The Tribunal shall

(a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,

(b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,

(c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article 19. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.

Article 20. The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

Article 21. The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various allied countries for the investigation of war crimes, and the records and findings of military or other Tribunals of any of the United Nations.

Article 22. The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Article 23. One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorized by him. The function of Counsel for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the Courts of his own country, or by any other person who may be specially authorized thereto by the Tribunal.

Article 24. The proceedings at the Trial shall take the following course:

(a) The Indictment shall be read in court.

(b) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty".

(c) The prosecution shall make an opening statement.

(d) The Tribunal shall ask the prosecution and the defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.

(e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defense.

(f) The Tribunal may put any question to any witness and to any Defendant, at any time.

(g) The Prosecution and the Defense shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.

(h) The Defense shall address the court.

(i) The Prosecution shall address the court.

(j) Each Defendant may make a statement to the Tribunal.

(k) The Tribunal shall deliver judgment and pronounce sentence.

Article 25. All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.

VI. JUDGMENT AND SENTENCE

Article 26. The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Article 27. The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Article 28. In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Article 29. In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under Article 14 hereof , for such action as they may consider proper, having regard to the interests of justice.

VII EXPENSES

Article 30. The expenses of the Tribunal and of the Trials, shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

(1) See protocol [LXI] for correction of this paragraph.

APPENDIX F

VERDICTS AND SENTENCING OF THE DEFENDANTS*

Defendant	Charged				Verdict				Sentence
	Count 1	Count 2	Count 3	Count 4	Count 1	Count 2	Count 3	Count 4	
Martin Bormann**	X		X	X	NG		G	G	DEATH
Karl Dönitz	X	X	X		NG	G	G		10 YEARS
Hans Frank	X		X	X	NG		G	G	DEATH
Wilhelm Frick	X	X	X	X	NG	G	G	G	DEATH
Hans Fritzsche	X	X	X		NG	NG	NG		ACQUITED
Walther Funk	X	X	X	X	NG	G	G	G	LIFE
Hermann Göring	X	X	X	X	G	G	G	G	DEATH
Rudolf Hess	X	X	X	X	G	G	NG	NG	LIFE
Alfred Jodl	X	X	X	X	G	G	G	G	DEATH
Ernst Kaltenbrunner	X		X	X	NG		G	G	DEATH
Wilhelm Keitel	X	X	X	X	G	G	G	G	DEATH
Gustav Krupp von Bohlen und Halbach***		X	X	X					
Robert Ley****	X	X	X	X					
Constantin von Neurath	X	X	X	X	G	G	G	G	15 YEARS
Franz von Papen	X	X			NG	NG			ACQUITED
Erich Raeder	X	X	X		G	G	G		LIFE
Joachim von Ribbentrop	X	X	X	X	G	G	G	G	DEATH
Alfred Rosenberg	X	X	X	X	G	G	G	G	DEATH
Fritz Sauckel	X	X	X	X	NG	NG	G	G	DEATH
Hjalmar Schacht	X	X			NG	NG			ACQUITED
Baldur von Schirach	X			X	NG			G	20 YEARS
Arthur Seyss-Inquart	X	X	X	X	NG	G	G	G	DEATH
Albert Speer	X	X	X	X	NG	G	NG	G	20 YEARS
Julius Streicher	X			X	NG			G	DEATH

Key: Indicted-X Guilty-G Not Guilty-NG

*Table created by the author

**Defendant was tried in absentia

***Defendant was indicted but not tried due to medical reasons

****Defendant committed suicide prior to trial

APPENDIX G

BREAKDOWN OF COVERAGE BY NEWSPAPER*

Type	Disposition Towards the Trial	<i>Chicago Daily Tribune</i>	<i>Los Angeles Times</i>	<i>The New York Times</i>	<i>The Wall Street Journal</i>	<i>The Washington Post</i>
Articles	Favorable	5	5	29	0	5
	Neutral	277	212	378	24	153
	Unfavorable	30	3	8	0	3
Columns	Favorable	0	6	1	0	4
	Neutral	0	2	0	0	0
	Unfavorable	0	1	1	0	1
Editorials	Favorable	0	7	18	0	14
	Neutral	0	0	5	0	1
	Unfavorable	19	0	0	2	0
Syndicated Columns	Favorable	0	5	0	0	2
	Neutral	0	1	0	0	0
	Unfavorable	0	0	0	0	0

*Table created by the author