

# Familiarity with Holocaust Evidence

*John Q. Barrett\**

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On November 2, 1953, Justice Robert H. Jackson spoke in Chicago and then participated in laying the cornerstone there of what would become the American Bar Center. Justice Jackson's speech, which was broadcast and published widely, addressed the lawyer's professional commitment to and personal faith in the rule of law.

At an early point in this lecture, Justice Jackson contrasted lawyers' optimistic faith in the rule of law with the facts of modern history, including the knowledge that Jackson himself had acquired eight years earlier as the chief United States prosecutor of principal Nazi war criminals at Nuremberg:

*Today it weighs heavily upon the hearts of men who love their [legal] profession that many conditions conspire to frustrate achievement of an effective rule of law. The events which have made the deepest impression upon the thought of the first half of our 20<sup>th</sup> century are two world wars which distorted or extinguished more lives through scientific slaughter of combatants and calculated killing and torture of civilian populations than any wars of history. Our era has seen probably as many as six million men, women and children put to death for no offense but having been born of a different race. It has reintroduced forced labor, on a scale never before witnessed, as a device of dictatorship. It made the concentration camp, whose scientific cruelty puts the ancient torture chamber to shame, one of the most populous institutions of our time.*

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\* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York ([www.roberthjackson.org](http://www.roberthjackson.org)). An earlier version of this text was posted to my Jackson Email List on April 20, 2009, which marked Holocaust Remembrance Day (*Yom Hashoah*).

For a selected archive of Jackson List posts, see my homepage at [www.law.stjohns.edu](http://www.law.stjohns.edu). To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send a note to [barrettj@stjohns.edu](mailto:barrettj@stjohns.edu).

*These evils in a large part of the world are still carried out in the second half of our century.<sup>1</sup>*

Three weeks later, Justice Jackson received at his Supreme Court chambers a typed letter from a senior California lawyer, Warren Jefferson Davis. They apparently were acquainted, I believe through meeting at one or more summer gatherings at the Bohemian Grove north of San Francisco. Davis's letter, which he labeled "Personal" by hand across the top of his letterhead, was anti-Semitic:

*My dear Mr. Justice Jackson: -*

*In your address at Chicago on 2 November, celebrating the cornerstone ceremony of the American Bar Association, you stated in substance that some 6,000,000 persons "of a different race"—jews, had been put to death by the Nazi regime.*

*This same statement was made in an "Israeli" [radio] broadcast as late as 1952, and has been used repeatedly by speakers seeking support for the payment to Israel of reparations amounting to \$1,500,000,000.*

*I am curious as to the source of your information.*

*The Committee on the Judiciary of the United States Senate cites the World Almanac figure of 15,713,638 jews in the world, at least 8,000,000 of whom now reside in the Western Hemisphere. Figures which I have seen estimate that counting the hundreds of thousands of illegal entrants while Roosevelt was in office, jews in this country approximate 10,000,000, or more than half of the jews in the world.*

*In 1913 the jewish population of Russia amounted to 6,946,000 (Univ. Jew. Encyc., Vol IX, p 285).*

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<sup>1</sup> Robert H. Jackson, *The American Bar Center: A Testimony to Our Faith in the Rule of Law*, 40 A.B.A. J. 19 (1954), available at [www.roberthjackson.org/documents/The%20American%20Bar%20Center.pdf](http://www.roberthjackson.org/documents/The%20American%20Bar%20Center.pdf).

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FAMILIARITY WITH HOLOCAUST EVIDENCE

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*Between 1881-1920 jews from Russia, entering this country, approximated 3,237,079 (Immigration and Naturalization Systems of the United States, p 817).*

*According to the Zionist Handbook, 68-70% of United States jews have relations in Poland and the Soviet Union.*

*In 1939 the number of jews in Germany was only 600,000. It would seem clearly impossible for six million jews to have been executed, as claimed.*

*It is true, however, that 5,000,000 Germans—4,000,000 civilians and 1,000,000 soldiers have never been returned from Soviet labor camps.*

*Is it not possible that your statement should cover the Germans in Russian slave labor camps, and not be construed to mean that Hitler slaughtered 6,000,000 jews, which is not supported by the evidence[?]*

*I respectfully call these facts to your attention, as undoubtedly use will be made of your statement in support of Israel's preposterous claims to indemnity.*

*With kind personal regards, I am,*

*Very sincerely yours,*

*/s/ W. Jefferson Davis<sup>2</sup>*

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<sup>2</sup> Warren Jefferson Davis to Robert H. Jackson, Nov. 20, 1953, in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. ("RHJ LOC"), Box 113, Folder 1. The above transcription, including Mr. Davis's typing (or probably having a secretary type) "jews" beginning with a lower case letter, is verbatim—an image of Davis's letter follows the end of this essay.

Justice Jackson responded immediately. Within a day or less, he gathered facts, dictated, probably carefully edited and then sent this reply:

*My dear Mr. Davis:*

*In answer to your letter of the 20<sup>th</sup>, I would say that the estimate of six million persons put to death is not confined to Jews, although they constituted the major number of victims of the Nazi regime. Slavs also were included in the extermination. Nor was it confined to those who were resident in Germany. In fact, a very large part of the extermination program was directed towards inhabitants of Poland, Hungary, Austria and other eastern sections which came under Nazi control, as well as the western European countries which they occupied.*

*Of course, it is not possible to give exact figures, but I think the estimate of six million persons put to death by the Nazi regime is justified. Wilhelm Hoettl [Höttl], of the Nazi Security Service [or "SS"], furnished evidence [at Nuremberg] that Adolf Eichmann, who had charge of the extermination program, told him that about four million had been executed in mass extermination centers and two million in the east by the execution squads of the Security service. [Rudolf] Hoess [Höss], commandant of the Auschwitz camp, which was only one of many, estimated that at least two and a half million were executed and exterminated there by gassing and burning, and at least another half million succumbed to starvation and disease, making a total dead in this one camp of three million persons. In addition to that, there was testimony [at Nuremberg] of the men who conducted the exterminations by gaswagons and execution squads. These operated not only in Poland but in Lithuania, Latvia and Estonia. In one case the execution of 150,000 to 200,000 Jews in the Ukraine was reported to [German] Gen. Thomas. [German] Gen. [Otto] Ohlendorff [sic—Ohlendorf], on the witness stand [at Nuremberg], said he liquidated approximately 90,000 men, women and children. The majority, he said, were Jews. None of this testimony was contradicted, although there were men in the dock [at*

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FAMILIARITY WITH HOLOCAUST EVIDENCE

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*Nuremberg] who had first-hand knowledge of the program and its results and every interest in the world to show that these statements were false.*

*I would, of course, make no defense of the Soviet Union holding Germans in Soviet labor camps. But that does not excuse Hitler for his slaughter. In fact, I was one of the few who in the excitement following the war fought tooth and nail to prevent any use of Germans in forced labor, on the excuse of reparations, and insisted that condemnation should not extend to the German people but to those individuals who could be proven guilty of specific offenses.*

*When you say that my statement is not supported by the evidence, it must be that you are not familiar with the transcript of proceedings of evidence taken at the Nürnberg trial, which is published in forty-two volumes including as exhibits the original reports of many of these extermination projects or the translated documents published by this Government.*

*Sincerely yours,*

*[Robert H. Jackson]<sup>3</sup>*

You will note that Jackson, unlike Davis, made a point of having his letter typed with the word “Jews” properly, and respectfully, capitalized.

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<sup>3</sup> Robert H. Jackson to W. Jefferson Davis, Nov. 24, 1953 (unsigned carbon copy), in RHJ LOC, Box 113, Folder 1. An image of this letter is the last two pages of this file.

WARREN JEFFERSON DAVIS

COUNSELOR AT LAW

AERONAUTICAL  
LEGAL CONSULTANT

Box 787, Ramona, California

20 November 1953

Hon. Robert H. Jackson, Associate Justice,  
Supreme Court of the United States,  
Washington, D. C.

My dear Mr. Justice Jackson:-

In your address at Chicago on 2 November, celebrating the cornerstone ceremony of the American Bar Association, you stated in substance that some 6,000,000 persons "of a different race"--jews, had been put to death by the Nazi regime.

This same statement was made in an "Israeli" broadcast as late as 1952, and has been used repeatedly by speakers seeking support for the payment to Israel of reparations amounting to \$1,500,000,000.

I am curious as to the source of your information.

The Committee on the Judiciary of the United States Senate cites the World Almanac figure of 15,713,638 jews in the world, at least 8,000,000 of whom now reside in the Western Hemisphere. Figures which I have seen estimate that counting the hundreds of thousands of illegal entrants while Roosevelt was in office, jews in this country approximate 10,000,000, or more than half of the jews in the world.

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page two

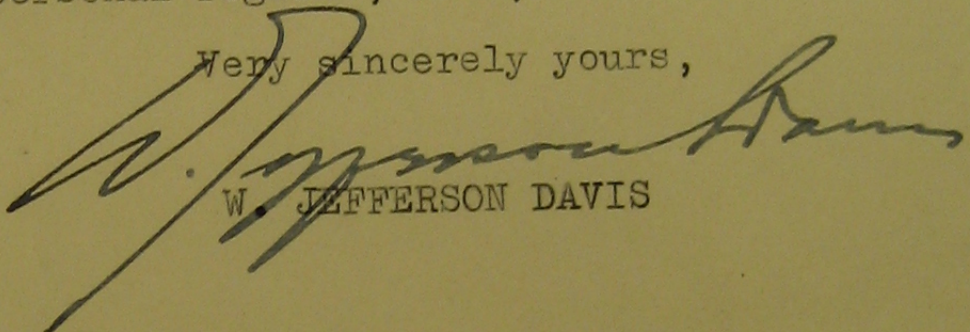
civilians and 1,000,000 soldiers have never been returned from Soviet labor camps.

Is it not possible that your statement should cover the Germans in Russian slave labor camps, and not be construed to mean that Hitler slaughtered 6,000,000 jews, which is not supported by the evidence.

I respectfully call these facts to your attention, as undoubtedly use will be made of your statement in support of Israel's preposterous claims to indemnity.

With kind personal regards, I am,

Very sincerely yours,



W. JEFFERSON DAVIS

D-M

November 24, 1953

Mr. W. Jefferson Davis  
Box 787,  
Ramona, California

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Mr. W. Jefferson Davis

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