

Departures & Breaks from Nuremberg (December 1945)

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By the middle of December 1945, less than a month into the Nuremberg trial of the principal Nazi war criminals, the United States had presented much of its direct case. The U.S. prosecutors' presentations, focused on Count One's charge of Common Plan and Conspiracy to commit Crimes against Peace, War Crimes, and Crimes against Humanity, included voluminous documentary and film evidence that actually covered the full breadth of the case. The International Military Tribunal (IMT) was attentive and impressed, the defendants were increasingly depressed, and the local and global publics, informed by daily newspaper and radio reports and by newsreels in theaters, were learning ever more about the crimes and horrors of Nazi Germany and the war.

Nuremberg's flood of incriminating evidence against the Nazi defendants was accompanied that month by a flood of departures—forty to fifty people, for example, in two mid-December weeks—from the staff of Justice Robert H. Jackson's U.S. Office of Chief of Counsel (OCC). Many personnel had fulfilled (and in some instances exceeded) their original commitments to work for Jackson for fixed time periods. Some left due to personal problems, in their lives or at home. A few people were sent home. Some departed in discontent (much of it merited) with aspects of OCC leadership, including a fair amount of administrative chaos. Some could take no more of Nuremberg's harsh working and living conditions. Some were U.S. soldiers who had accrued enough "points" to qualify for discharge from the service. (The next month, Justice Jackson, writing somewhat wistfully from Nuremberg to his Supreme Court colleague and close friend Justice Felix Frankfurter in Washington, noted the absurdity of

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some U.S. editorial writers seeming to think, before the trial was done, that Jackson had “accumulated points enough to come home...”¹)

Some of the early “departed” from Nuremberg were destined not to be missed. Others, including Colonel Benjamin Kaplan, Commander Sidney J. Kaplan, Miss Katherine B. Fite and Major Joseph Dainow, were among the best minds, workers, lawyers and, by all accounts, people Justice Jackson had on his staff—he was bleeding some of his “A team” and knew it.

Jackson also was losing key assets and friends across the Office of Military Government for Germany (U.S.) (OMGUS), of which his OCC was only one, albeit a very significant and prominent, part. Lieutenant Colonel Charles Fairman, for example, who before the war had been (and soon would be again) a political science professor at Stanford University, had been heading the International Law Branch in the Office of the Theater Judge Advocate in Frankfurt. In that capacity, Fairman had been working closely with Jackson since spring 1945, including to plan war crimes trials that would follow the IMT. By early December 1945, Fairman, who had been in military service since 1942, was leaving Frankfurt and OMGUS for the U.S. and civilian life. On Monday, December 10, Fairman penned this farewell note:

My dear Mr. Justice Jackson –

I cannot seal this envelope, containing the last papers on the arrangement for further prosecution of war criminals, without adding a personal note to express my deep thanks for all your help and kindness and, if I may say so, my admiration for the leadership and resourcefulness you have displayed. What a transformation from the situation when you first visited Nürnberg last July!

¹ Robert H. Jackson to Honorable Felix Frankfurter, Jan. 25, 1946, at 2 (unsigned carbon copy), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. (“RHJ LOC”), Box 100, Folder 7.

In a few moments I fly off homewards, with a brief stop in Washington. I wish you could share my good fortune.

I am, with respect,

Sincerely yours

Charles Fairman²

Jackson of course shared Fairman's wish, but Jackson was in the middle of a presidential assignment that he believed in and was committed to completing.

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On Friday, December 14, 1945, the IMT recessed for the weekend. That evening, for staff morale and his own, Justice Jackson and about 32 U.S. colleagues embarked on a weekend trip to the German Alps. They left Nuremberg around 2200 hours on a special electric train that had been provided by General Joseph T. McNarney (U.S. Army), Commanding General of U.S. Forces in the European Theater. It formerly had been the train of Hermann Goering, Hitler's number two and now the lead defendant who Jackson *et al.* were prosecuting. The train had one luxury car that contained four compartments and a salon. One of these compartments, which Jackson took, had a huge bed and a private bathroom with a sunken tub and a shower. Two other cars had ordinary sleeper compartments. The train also had a lounge car with radio reception and a dining salon.

The train travelled slowly and with a terrible list due to the poor condition of the railroad bed. As they rolled southward, the passengers did a lot of drinking and singing. Colonel John Harlan Amen, one of the senior U.S. prosecutors and the life of many parties, performed magic and card tricks. When the train stopped at Munich, Jackson's son and executive assistant Lieutenant William E. Jackson and others disembarked for a snowball fight.

On Saturday, the train arrived in snowy Berchtesgaden at dawn—Bill Jackson and others who had not slept much watched the sun rise over the mountains. At 0800 hours, a military driver took Justice Jackson, Bill and others up from the train station through the village to the

² Charles Fairman to Robert H. Jackson, Dec. 10, 1945, in RHJ LOC Box 12, Folder 10.

Berchtesgaden Hof, a hotel on the side of the mountain. They checked into the best suite, which featured a terrace overlooking the valley. After they had changed into heavy clothes, the driver took them farther up into the mountains. They walked through snow to the bombed remains of a house that once been Goering's and another that had belonged to Martin Bormann (who they were, at Nuremberg, prosecuting in *abstentia*).

Justice Jackson and party then walked to the nearby ruins that had been Hitler's *Berghof*. Except for the snow, it was little changed from when they first had visited it in July 1945. The group stood, and was photographed, in the now-empty frame that once had held the *Berghof*'s massive, famous picture window. Gordon E. Dean, one of Justice Jackson's close friends and senior advisers (who soon, due to health problems, would have to retire from the case), pulled out his comb, pretended it was a Hitler moustache and posed mocking the former resident. Bill Jackson and Captain John Vonetes, the OCC's Director of Accommodations, found an old mountaineer with a sleigh. They paid him cigarettes and chocolate for a high-speed ride down the valley.

The relaxation and escape continued throughout the day. That afternoon, Justice Jackson and team visited Königsee. In town, they heard U.S. Army loudspeakers blaring what some then called "jive" music. An electric boat took them up Lake Königsee to see what once had been a royal family hunting lodge with Byzantine domes. Later, they enjoyed apple *kuchen* and coffee at a lake hotel that now was a rest center for U.S. enlisted men. Dinner, back in Berchtesgaden, featured lots of food, the best German *liebfraumilch* and then a two-hour show with folk songs and dancers in Tyrolean costumes. (And later, after Justice Jackson had retired, the hotel bar featured more drinking, dancing, U.S. officers and *frauleins*.)

On Sunday morning, the Jacksons were driven from Berchtesgaden to Salzburg and then up into Austrian mountains. Later, back in Berchtesgaden, Justice Jackson took a horse-drawn cutter to a Königsee ski slope that was being opened as a recreation center for U.S. soldiers. Jackson, who had grown up in and near the mountains of western Pennsylvania and New York, strapped on skis and apparently knew what to do. Later, he and Bill visited Berchtesgaden's *Reichschancellory* and saw the room from which General Wilhelm Keitel (another Nuremberg defendant) had directed German Army operations in last days of the war, offices in a large underground shelter, and other rooms. At dinner, they

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met the U.S. general who had presided over war crimes trials at the former Dachau concentration camp.

The Jackson group then reassembled at the train and traveled back to Nuremberg. On Monday morning, the trial resumed—and the courtroom work that day was handled by lawyers who had not been on the weekend trip.

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A few days later, Justice Jackson, writing a long letter to his wife, daughter and daughter-in-law back in the United States, included this description:

Last week end we went to Berchtesgaden to open the place where many of the staff will go for short stays. The ski run was great and the old man got along pretty well. We visited Hitlers home in ruins. It is a beautiful place in the Bavarian Alps. We had sleigh rides, boat rides, ski rides, jeep rides etc. It was a grand week end. General McNarney loaned us his private train to go. It used to be Goerings and I had a room with a bath built to fit Goering. All pretty swank I'll tell you.³

In his letter of thanks to General McNarney, Jackson was more measured:

I am very grateful to you for making transportation to Berchtesgaden and back available to me and my party this week end. It made the trip a comfortable one...⁴

In December 1945, Lieutenant Whitney R. Harris was one of the young OCC lawyers who was not departing—he was rising to assume significant responsibilities at Nuremberg. He was part of the group that traveled to Berchtesgaden for that weekend of relaxation. He saw Justice Jackson ski the slope at Königsee.

³ Robert H. Jackson to Irene G. Jackson, Mary J. Loftus & Nancy R. Jackson, Dec. 20, 1945, at 1-2, *in* RHJ LOC Box 2, Folder 3.

⁴ Robert H. Jackson to Lt. Gen. Joseph T. McNarney, Dec. 17, 1945 (unsigned carbon copy), *in* RHJ LOC Box 111, Folder 9.

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Jackson was not a very good skier, Whitney Harris told me sixty years later. “He just went straight down the hill with his arms straight out,” he recalled, grinning. “But he didn’t fall.”