

Four Years and More Than Forty Blocks (June 11, 1945)

*John Q. Barrett**

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After the Supreme Court recessed for the day on Monday, June 11, 1945, Justice Robert H. Jackson took a train from Washington to New York City.

Justice Jackson was about seven weeks into his “other” job, President Truman’s appointment of Jackson to serve as United States Chief of Counsel to prosecute leading Nazi war criminals. In this capacity, which he was juggling with his judicial responsibilities as the Supreme Court approached the end of its term, Jackson already had made a quick trip to Europe to consult with General Eisenhower and other Allied military, diplomatic and legal personnel. In Washington, Jackson was working intensely with his small staff. On June 7, he had issued publicly a report to President Truman, explaining plans and generating a wave of public admiration and political support.¹ Now, a few days later, Jackson was traveling to New York for meetings with other advisors, including law enforcement personnel, Monsignor Francis Spellman, and Jewish leaders.

In Manhattan, an FBI agent met Jackson at the train and drove him uptown to the apartment of Herbert Bayard Swope, the great American newspaper reporter. After dinner with the Swope family, the men discussed Germany (a topic on which Swope had long expertise²), Jackson’s assignment and his press relations.

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¹ See JUSTICE JACKSON’S REPORT TO THE PRESIDENT ON ATROCITIES AND WAR CRIMES (June 7, 1945,) available at http://avalon.law.yale.edu/imt/imt_jack01.asp.

² See, e.g., HERBERT BAYARD SWOPE, INSIDE THE GERMAN EMPIRE IN THE THIRD YEAR OF THE WAR (1917) (based on a series of articles written for the *New York World*); see also ERIKA J. FISCHER & HEINZ DIETRICH FISCHER, AMERICAN REPORTER AT THE INTERNATIONAL POLITICAL STAGE: HERBERT BAYARD SWOPE & HIS PULITZER PRIZE-WINNING ARTICLES FROM GERMANY IN 1916 (1982).

One matter particularly concerned Jackson as he prepared to work jointly with Soviet and British allies to determine the fate of Nazi war criminals: alleged British enthusiasm for summary executions. Jackson understood, he told Swope, that at one of their wartime meetings with now deceased U.S. President Franklin D. Roosevelt, Soviet premier Josef Stalin had insisted, in opposition to the views of British Prime Minister Winston Churchill, that no captured Nazi war criminals should be shot without first giving them trials. Swope responded by telling the story, as FDR had told it to him, of the exchange. Stalin had called for killing 50,000 Nazis. Churchill responded by expressing revulsion. FDR defused the moment by joking about killing only 49,900. In other words, it was Stalin, not Churchill, who had championed summary executions, and FDR had at least postponed—apparently now for Jackson to address—a crisis between the allies.³

Swope gave Jackson a range of political and press advice. Swope said that it would be better if the USSR did not participate with the U.S. in trying Nazi war criminals. He urged Jackson to permit press coverage of the trials. Swope said the trials should have pageantry, such as judges in robes and British officials in wigs. He estimated that Jackson's public report had bought him time until about August 1st to work in Europe, but that he then would need to return to the U.S. and renew his explanation of what he was doing. He urged Jackson to keep action stories—stories about the selection of the trial location; stories about steps in trial preparation—coming out of Europe over the summer. Swope volunteered to watch U.S. press reaction for Jackson while he was away. Swope offered to come to Europe to advise Jackson when he got to the stage of setting up the trials. Finally, Swope offered to get New York reporters together to meet with Jackson when he returned in August.

As midnight approached, Jackson decided to retire to his hotel room. With all of these matters (and probably more) on his mind, he chose to walk. Accompanied by Swope, Jackson walked more than 40 blocks, from the Swope apartment at 544 East 86th Street to the Hotel Roosevelt on Madison Avenue at 45th Street.

³ In the memoir that he drafted in the early 1950s, Jackson penned an account of this November 1943 Teheran conference incident that generally tracked the FDR hearsay account that Swope recited to Jackson in June 1945. See ROBERT H. JACKSON, *THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT* 149 (2003) (John Q. Barrett, ed.).

FOUR YEARS & MORE THAN FORTY BLOCKS (JUNE 11, 1945)

The next morning, June 12, 1945, marked the fourth anniversary of President Roosevelt nominating Jackson, then his Attorney General, to serve on the Supreme Court. There is no evidence that this milestone occurred to Jackson—he had moved on.