

Eugene Meyer on the Team (1945)

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When President Truman recruited Justice Robert H. Jackson in late April 1945 to represent the United States in the international prosecution of leading Nazi war criminals, Jackson immediately needed to recruit assistants.

For the most part, Jackson recruited people from elsewhere in the government, including military service, to constitute his “Office of Chief of Counsel” (the OCC). In a few instances, however, Jackson pursued non-government personnel. In particular, he considered and ultimately pursued and recruited, for litigation and advocacy prowess, the best of the lawyers who had been arguing cases before him and his Supreme Court colleagues.

One of these stars was Herman Phleger, of San Francisco’s Brobeck, Phleger & Harrison law firm, perhaps California’s leading lawyer.¹ In May 1945, Jackson explored the possibility of recruiting Phleger by writing to their mutual friend Eugene Meyer, the owner, editor and publisher of *The Washington Post*.

Justice Jackson dictated and sent the following letter—an interesting account of his early thinking about what would become the Nuremberg trial—to Eugene Meyer in San Francisco, where he was

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For an archive of selected Jackson List posts, many of which have document images attached, visit www.stjohns.edu/academics/graduate/law/faculty/profiles/Barrett/JacksonList.sju.

To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send “subscribe” to barrettj@stjohns.edu.

¹ See generally Michael Svanevik & Shirley Burgett, *Mileposts: Herman Phleger, dean of S.F. Bar*, SAN FRANCISCO EXAMINER, May 20, 2002, at 42A.

attending the international conference to negotiate the creation of the United Nations:

May 7, 1945

Mr. Eugene Meyer
Mark Hopkins Hotel
San Francisco, California

My dear Mr. Meyer:

I am assuming that in San Francisco you would not fail to see Herman Phleger from time to time. I am wondering if you could ascertain without committing me whether he could be available for perhaps a year starting almost at once to assist in the preparation and trial of war criminals. I may need one or two topnotch advocates for I intend to have the enterprise so staffed that sickness, or worse, will not cause delay. As you know, I admire Phleger's advocacy but do not know much about his background or general attitude toward a venture of this kind.

No one knows better than you the difficulties that lay in our way and the very large chance of failure. I think I have taken account of all of these and can see our way through. It will take a great deal of imagination and courage to plow into new fields in procedure and in international law and, of course, it would not do to use in top positions men who are ... too much bound to the status quo in these matters.

I do not know Phleger's political, religious, racial, national or other backgrounds, and I wish you would give me a bit of information about it for it will be necessary to work out a well-balanced staff as well as an able one.

I know you are very busy and dislike to bother you, but I know your admiration for Phleger and I presume on

your friendship for me which I greatly value to ask you this favor.

With best regards,

Sincerely yours,

[/s/ Robert H. Jackson]²

I assume that Meyer received Jackson's letter and communicated back to him. I know that Jackson ultimately did not add Phleger to his OCC team—I suspect because Jackson sought a time commitment that was too long for Phleger, and/or because he already had been “taken” by a related call to public service.

At the same time that Jackson was building his staff, his close friend, Solicitor General of the United States Charles Fahy, was working in San Francisco as a U.S. delegation adviser on world court and U.N. Charter issues. Shortly thereafter, General Eisenhower, with President Truman's approval, appointed Fahy to serve as Director of the Legal Division of the U.S. Group, Allied Control Council, and Legal Adviser to U.S. Commanding General Lucius D. Clay.³ (Somewhat like Jackson at the Supreme Court, Fahy agreed to take a leave of absence as Solicitor General as part of accepting this assignment.⁴) And Fahy successfully recruited Phleger to serve as one of his two deputies.

Fahy, Phleger and a team of ten other lawyers arrived in Höchst, a district of Frankfurt am Main in Allied-occupied former Germany, on July 10, 1945. Soon Fahy and Phleger were living in Berlin. In six months as Fahy's deputy, Phleger worked on many projects. One was purging Nazi provisions from the German legal code. Another was working closely with Justice Jackson and his team, in Berlin and in Nuremberg, on issues concerning prosecutions of Nazi criminals. (In April 1946, Phleger, back at his firm in San Francisco, published in *The Atlantic Monthly* a significant article on the legal validity of the International Military

² Letter from Robert H. Jackson to Eugene Meyer, May 7, 1945 (unsigned carbon copy), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 98, Folder 9.

³ See *Eisenhower Names Fahy As Legal Aide*, N.Y. TIMES, June 27, 1945, at 3.

⁴ See *id.*

Tribunal (IMT) at Nuremberg and the criminal charges that it then was adjudicating.)

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Justice Jackson, serving as U.S. Chief of Counsel, was away from the United States almost entirely from June 1945 through July 1946. His only return home was a ten-day visit, for extensive consultations with President Truman and others, in early September 1945.

During this visit, Robert and Irene Jackson hosted one dinner for friends at their Virginia home, Hickory Hill. On Saturday, September 8th, their guests included former Attorney General and newly-named U.S. judge on the IMT Francis Biddle and his wife Katherine; leading Washington attorney and Jackson's friend and mentor dating back to their 1917 days as lawyers in Buffalo, John Lord O'Brian; columnist Walter Lippmann and his wife Helen; France's ambassador to the U.S. Henri Bonnet and his wife; Washington lawyer and conservative political leader (once the New Deal's leading opponent) Jouett Shouse; and Eugene Meyer of *The Washington Post*. Jackson later dictated a diary note that the evening featured "[m]uch discussion of the case [that Jackson was preparing to prosecute at Nuremberg] and Mme. Bonnet did not lead the flock home very early."

Jackson also noted a special offer of support: "Eugene Meyer came [to the house] a half-hour early to discuss matters generally and said if we wanted any particular things emphasized [in his newspaper], to [send a] cable."