

Judgments Days in Nuremberg (1946)

*John Q. Barrett**

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On September 30, 1946, Justice Robert H. Jackson spent his final night in Nuremberg, in what then was the United States occupation zone of what had been, before its unconditional surrender, Nazi Germany.

As United States Chief of Counsel since May 1945, Justice Jackson had negotiated with British, French and Soviet allies the creation of the International Military Tribunal (IMT), supervised the gathering and analysis of voluminous evidence, approved and brought criminal charges against twenty-four Nazi leaders and six Nazi organizations and, in November 1945, opened history's first international prosecution for crimes against peace, war crimes and crimes against humanity.

During the next eight months, Justice Jackson worked in Nuremberg as a trial prosecutor and as an administrator of a large U.S. staff and a four-nation prosecution while also working throughout Europe as a leading occupation government official and U.S. diplomat.

Jackson's active work in Nuremberg concluded when he delivered his closing argument to the IMT on July 26, 1946. Five days later, he left Nuremberg temporarily, returning to the U.S. and Supreme Court work while part of his team remained in Nuremberg to present evidence against the indicted organizations and to sum up those cases, and then while the IMT judges deliberated and wrote their judgment.

Jackson landed back in Washington on August 2, 1946. He remained there, living in his Virginia home and working at the Supreme Court, until September 18. He then flew back to Europe, accompanied by some of his friends—Charles A. Horsky, Francis M. Shea, Robert G.

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Storey, and Father Edmund A. Walsh, S.J.—who had been senior members of his U.S. prosecution team during various pretrial and trial phases. They were going back to Nuremberg to witness the IMT judgment, which was scheduled to be handed down on September 23.

After refueling stops in Goose Bay, Labrador, and in Iceland, Jackson and his delegation landed in Paris on September 20. They learned then that the IMT had announced that its judgment would not be announced until September 30.



1946: L-R, IMT judges Volchkov, Nikitchenko, Birkett, Lawrence, Parker, Biddle, Donniedeau de Vabres, and Falco on the bench, Palace of Justice, Courtroom 600.

Justice Jackson, who had missed the previous Supreme Court term (a full year of Court work), was determined to be back on the bench in Washington when the new term began on October 7, 1946, the first Monday in October. The IMT's unexpected delay meant that Jackson would have almost no leeway in his travel schedule.

Jackson also, since leaving Nuremberg at the end of July, no longer had a requisitioned residence there—“his” house had passed to others.

So in late September 1946, Jackson stayed in Paris. He worked on drafting his final report to President Truman. He wrote and sent memoranda and cables, including back to the War Department about Nuremberg trial matters. He also worked, it seems, on a major speech that he had agreed to deliver, long before he knew how squeezed his schedule would become, at the University of Buffalo in Buffalo, New York, on October 4.¹

Jackson flew from Paris to Nuremberg a few days later, but he was called back to Paris almost immediately by his friend and former U.S. Supreme Court colleague James F. Byrnes, who a year earlier had become U.S. Secretary of State. They discussed many matters. Some related to Germany and the Nuremberg trial. Others concerned the Supreme Court. One matter was Byrnes’s support for the idea of Jackson becoming U.S. Ambassador in London if, as some press reports then had it, Jackson wanted that job. He made clear to Byrnes that he did not.

On one of their Paris afternoons together, Byrnes added Jackson to the U.S. delegation at the peace conference that was ongoing at the *Quai D’Orsay*. Having experienced months of “simultaneous” (which really meant somewhat-close-to-simultaneous) four-language interpretation during the Nuremberg trial, Jackson reported that at the Paris conference it was “terribly dull to listen to interpretations into 3 other languages, 1 by 1 after [each] speaker finished. *Awful.*”²

On Saturday, September 28, 1946, Jackson and guests flew from Paris back to Nuremberg. His weekend there was filled with work meetings and social activities. Many of his travelling companions found extremely comfortable, indeed fancy, quarters.

¹ Jackson made it back to the United States in time to keep this commitment. His speech at the October 4, 1946, closing ceremony of the University of Buffalo’s centennial is published at 60 BUFFALO LAW REVIEW 282-93 (2011). See also John Q. Barrett, *Bringing Nuremberg Home: Justice Jackson’s Path Back to Buffalo, October 4, 1946*, 60 BUFF. L. REV. 295-323 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2152034.

² William E. Jackson note, Sept. 25, 1946 (“RHJ attended plenary session of Peace Conference as part of US delegation—terribly dull to listen to interpretations into 3 other languages, 1 by 1 after speaker finished. *Awful.*”).

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Having lost his house, Jackson, along with his son and executive assistant Lieutenant William E. Jackson (U.S. Navy Reserve), his secretary Mrs. Elsie Douglas, and his nephew Private Harold J. Adams (U.S. Army), bunked in servants' quarters on the top floor of a requisitioned German mansion.

Private Adams, serving in the U.S. Army of occupation, had been ordered to Nuremberg by Lieutenant General Lucius D. Clay, Deputy Military Governor in the Office of Military Government for Germany (U.S.) and thus "General" (assimilated rank) Robert Jackson's superior officer. Gen. Clay took this action at Jackson's request. He wanted his nephew to see history.

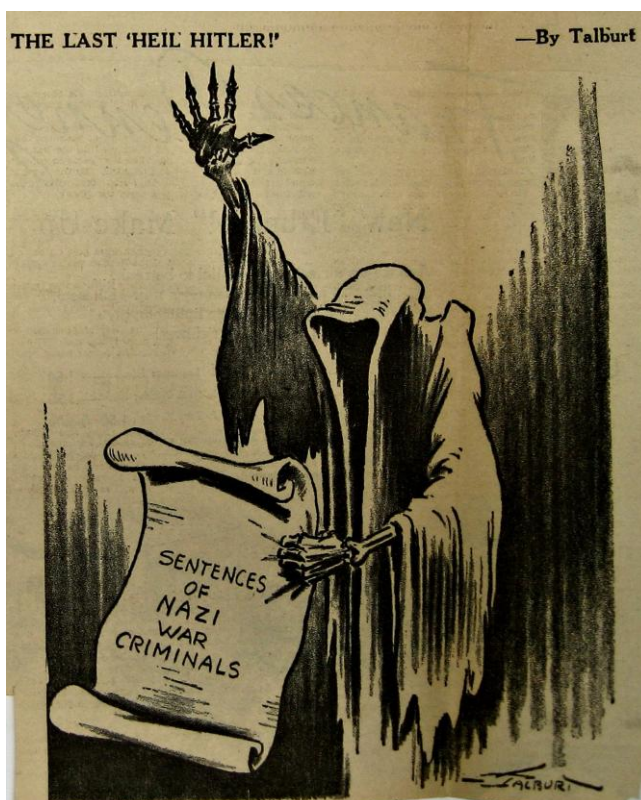
On Monday, September 30, 1946, the IMT judges began to read their lengthy Judgment.³ The IMT affirmed the validity, in international law, of each crime charged in the indictment. That afternoon, the court returned its verdicts—some convictions, some acquittals—on the indicted organizations. That night, Jackson hosted a dinner and then retired to his room under the eaves.

On Tuesday, October 1, 1946, the IMT delivered its verdicts on the twenty-two individual defendants. Nineteen were found guilty and three

³ Its text is available here: http://avalon.law.yale.edu/subject_menus/judcont.asp.

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were found not guilty. Of the nineteen, seven were sentenced to terms of imprisonment and twelve were sentenced to death by hanging.



Harold Talburt cartoon,
WASHINGTON DAILY NEWS, October 1, 1946, p. 24

Immediately after the IMT adjourned for the last time, Justice Jackson issued a written statement. He said that he was gratified that the Tribunal had sustained and applied the principle that aggressive war is a crime for which statesmen may individually be punished. He said that he had not had time to study other aspects of the intricate opinion. He expressed regret that the Tribunal had acquitted two defendants, Hjalmar Schacht and Franz von Papen, and that it had declined to declare the criminality of the German Army General Staff, admitting that “[o]ur argument for their conviction ... seemed so convincing to all of us prosecutors” and saying that they would have to study the effect of those acquittals on further prosecutions of industrialists and military officers.

Jackson's statement closed with a reflective, long view:

I personally regard the conviction or sentence of individuals as of secondary importance compared with the significance of the commitment by the four [Allied] nations to the position that wars of aggression are criminal and that persecution of conquered minorities on racial, religious or political grounds is likewise criminal. These principles of law will influence future events long after the fate of particular individuals is forgotten.⁴

At 5:30 p.m. that afternoon, Jackson left Nuremberg. His plane made stops in Paris, the Azores and Stephenville, Newfoundland. Before the next day, October 2, was done, he was back in Washington.

On October 3, Justice Jackson was back in his Supreme Court chambers, where he found "an awful pile of work that had accumulated in [his] absence."

Jackson traveled from Washington to Buffalo and delivered his first post-Nuremberg speech there on October 4, 1946.⁵

Three days later, he was present on the bench when the Supreme Court began its new term.

He never again left North America.

⁴ See *Jackson Statement*, N.Y. TIMES, Oct. 2, 1946, at 24.

⁵ See *supra* note 1.