

# James B. Donovan, Before the “Bridge of Spies”

*John Q. Barrett\**

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The new film “Bridge of Spies” reports, in on-screen text, that it is “[i]nspired by true events.” Tom Hanks plays a character named James Donovan. He is a 1950s New York City lawyer. He represents insurance companies in policy coverage controversies—in one, the issue is whether his client, an automobile insurer, is liable up to the policy limit times five, or just once, for damages that an insured driver caused by hitting five motorcyclists.

Then Donovan is recruited by the bar and bench in Brooklyn to represent Rudolf Abel, whom the United States has arrested and charged with being a Soviet spy.

What qualifies “insurance lawyer” Donovan to take on this high profile criminal defense job at the depths of the U.S.-U.S.S.R. Cold War? Well, as a colleague mentions to Donovan, “You distinguished yourself at Nuremberg.”

Donovan’s response is both an acknowledgement and, implicitly, a disclaimer that he is the right attorney to handle Abel’s defense: “I was on the prosecution team.”

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Seventy years ago, the real James Britt Donovan indeed was a young but senior and very significant member of Justice Robert H. Jackson’s U.S. prosecution team before the International Military Tribunal (IMT) at Nuremberg. This piece sets forth—including as background for

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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)). I emailed an earlier version of this essay to The Jackson List on November 17, 2015. Thanks to the late Phil Biggers and to Carol Leadenham and her colleagues at the Hoover Institution Archives, Stanford University, for research assistance.

For an archive of selected Jackson List posts, many of which include document images, visit <http://thejacksonlist.com>.

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your viewing of "Bridge of Spies," which I recommend highly—some of Donovan's life story, including his Nuremberg work.

James Donovan was born in New York City in 1916. His father was a medical doctor, and quite successful. Jim attended Fordham University, graduating in 1937. He attended Harvard Law School, graduating in 1940. He was hired by a New York City law firm, Townley, Updike and Carter. After passing the New York bar examination, he worked there for two years, primarily defending insurance companies and newspapers.

After the U.S. became involved in World War II, Jim Donovan took a leave from his law firm and moved to Washington. In 1942, he joined the U.S. Office of Scientific Research and Development (OSRD)—a research organization, under the direction of Vannevar Bush, that assisted the military—as its associate general counsel. He soon became its general counsel.

That summer, Donovan, working for OSRD as a civilian, applied and was admitted to the naval reserves. In 1943, he was commissioned as a U.S. Navy ensign. He was assigned to the newly-created clandestine organization, the Office of Strategic Services (OSS). He took a leave from OSRD and became OSS assistant general counsel. He served under its leader, then Brigadier General, and later Major General, William J. ("Wild Bill") Donovan. He was Jim Donovan's OSS boss, mentor and great hero (and not his relative).

James Donovan rose at OSS in Washington during the War. In late 1943, he became chief of OSS's Legal Division. In 1944, he was named OSS general counsel. In early 1945, he was promoted to lieutenant. In March 1945, Gen. Donovan named Lt. Donovan, still OSS general counsel, to head its new War Crimes Division. Its charge was to assemble evidence for the prosecution, following their military defeat and apprehension, of Nazi war criminals.

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On May 2, 1945, President Truman announced publicly his appointment of Justice Jackson to serve as U.S. chief of counsel for the prosecution of Nazi war criminals. Days earlier, Jackson had suggested privately to the President that a prominent Republican be named to assist

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Jackson, himself a prominent former (i.e., before his judicial appointment) Democrat. Truman agreed and asked for Jackson's nominee. He suggested Gen. Donovan, a friend since their days as young lawyers in Buffalo, New York, and, of course, at OSS a substantive expert in the War, intelligence and war crimes evidence. Truman agreed with that too, and Jackson recruited Gen. Donovan, who joined immediately and with enthusiasm, to be his deputy.

Through General Donovan, Justice Jackson got introduced immediately to OSS general counsel James B. Donovan. Over the next seven weeks, they worked together in Washington on a daily basis. In late June 1945, they and the rest of Jackson's small, core team moved to London for negotiations with Soviet, French and British counterparts. After weeks of hard, complex discussions—during which Jackson obtained for the OSS general counsel the unusual two-step promotion that made him Commander James B. Donovan (USN)—the Allies on August 8, 1945, signed the London Agreement creating the IMT. Commander Donovan stood behind the Justice as he signed on behalf of the U.S.



From London, the path led to the former Nazi Germany, and to Nuremberg. Jackson put Jim Donovan in charge of preparing photographic evidence for the trial. He moved between Nuremberg, where he and colleagues lived in a requisitioned villa, and Berlin (Wannsee), where he supervised sons of Hollywood, OSS personnel and others, including John Ford, Budd Schulberg, Stuart Schulberg, Ray Kellogg and George Stevens, as they reviewed and assembled film of defendants in their former Nazi power, and film of concentration camps in the horrors of their liberation.

The Nuremberg trial opened on November 20, 1945. The next day, Justice Jackson delivered his opening statement for the U.S. It then was the first of the four nations to present its case, which in fact spanned the entire case (the Nazi conspiracy, the crime of waging aggressive war, war crimes, and crimes against humanity).

On November 29, Commander Donovan introduced and played in the IMT's Nuremberg courtroom the first film evidence, entitled "Nazi Concentration Camps." It was a compilation of motion pictures that Allied military photographers had taken as the armies in the West had liberated various camps. The film included narration taken directly from the reports of these photographers.<sup>1</sup>

On December 11, Donovan introduced and played a second film. This motion picture, entitled "The Nazi Plan," was lengthy—6,000 feet of film. Donovan's team had selected these excerpts from 80,000 feet of film that they had captured and reviewed. As he explained to the IMT, this film was "an almost complete chronicle of the rise and fall of National Socialism as documented in films made by the Nazis themselves."<sup>2</sup>

On December 13, Donovan presented a third film as Nuremberg trial evidence. It was, he explained a 90-second strip of 8-millimeter silent film, created originally on a home camera by a member of the SS and later captured by U.S. forces in an SS barracks near Augsburg. The prosecution called this "Original German 8-millimeter Film of Atrocities against Jews." Donovan stated to the Tribunal the prosecution belief that

the scene is the extermination of a ghetto by Gestapo agents, assisted by military units. And, as the other evidence to be

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<sup>1</sup> See II TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946 ("The Blue Series") at 432-34.

<sup>2</sup> III The Blue Series at 400-02.

presented by the Prosecution will indicate, the scene presented to the Tribunal is probably one which occurred a thousand times all over Europe under the Nazi rule of terror.<sup>3</sup>

Later that month, Jim Donovan, like much of Jackson's senior staff, left Nuremberg after the central U.S. case had been presented. He returned to New York, his family and civilian life.

The Nuremberg trial continued through most of 1946. Jackson delivered his closing statement in late July. The IMT rendered its judgment on September 30<sup>th</sup>.

As the trial was concluding, Justice Jackson requested that military authorities decorate Commander Donovan for his Nuremberg service. They remained in friendly, occasional contact for the rest of the Justice's life.

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And then Jim Donovan became, well, movie material. In 1957, he was recruited to represent Rudolf Abel. After the jury convicted Donovan's client, he persuaded the judge not to sentence Abel to death, including by arguing that someday that U.S. might wish to trade living, incarcerated Abel for a captured American spy. Over the next two-plus years, Donovan handled Abel's appeal, ultimately without success, losing a 5-4 decision in the U.S. Supreme Court.<sup>4</sup>

Just months after that, the U.S.S.R. shot down a U.S. spy plane and captured its pilot. That summer, he was put on trial in Moscow—where the chief prosecutor was Roman Rudenko, known well to Jim Donovan as U.S. chief prosecutor Jackson's Soviet counterpart at Nuremberg.

The U.S. pilot, Francis Gary Powers, was convicted and sentenced to prison. Thereafter, Jim Donovan, working very closely with U.S. government officials, including some who he had known back in their OSS days, negotiated a U.S.-U.S.S.R. deal. In February 1962, on an East Berlin bridge, Donovan personally exchanged his former client Abel for the Soviet prisoner Powers.

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<sup>3</sup> *Id.* at 536-37.

<sup>4</sup> See *United States v. Abel*, 362 U.S. 217 (1960), available at [www.law.cornell.edu/supremecourt/text/362/217](http://www.law.cornell.edu/supremecourt/text/362/217).

So here are some links—

- a “Bridge of Spies” movie trailer—[click here](#);
- information on the U.S. Supreme Court case *United States v. Abel*, including links to audio recordings of Jim Donovan’s oral arguments in February 1959 and then, on reargument, in December 1959—[click here](#);
- the Supreme Court’s 1960 decision, *United States v. Abel*, which rejected Donovan’s constitutional arguments and upheld Abel’s criminal convictions and sentence—[click here](#);
- the 2015 reissued edition of Donovan’s excellent *Abel* case diary/book *Strangers on a Bridge: The Case of Colonel Abel*, published originally in 1964—[click here](#);
- Donovan’s 1967 book, *Challenges: Reflections of a Lawyer-at-Large*, which includes, among other pieces, a lecture he delivered in New York City in October 1946 on the Nuremberg trial and his 1962 Stevens Lecture at Cornell Law School on “The Privilege of Advocating Unpopular Causes”—[click here](#) for a cover image at least; the book is out of print and sadly hard to find; and
- the late Philip J. Bigger’s 2006 biography *Negotiator: The Life and Career of James B. Donovan*—[click here](#).

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In 1944 and 1945, Jean Torgerson was employed at OSS as Jim Donovan’s secretary. She worked with him in Washington, and then in London and Nuremberg on Justice Jackson’s staff. She was capable and smart, and they got along well.

Almost twenty years later, on the weekend of February 10-11, 1962, Torgerson, living in Washington, read newspaper reports of an

extraordinary international prisoner swap. She read that Pierre Salinger, President Kennedy's press secretary, had announced at a White House press conference at 3:00 a.m. that Saturday that the Soviet Union had released its prisoner, the U.S.S.R.-captured and convicted U.S. U-2 spy plane pilot Francis Gary Powers, in exchange for the U.S.-captured and convicted U.S.S.R. spy Rudolf Abel. And Torgerson read that the principal U.S. negotiator of this trade had been her former OSS boss, James B. Donovan.

The next day, she wrote this lovely letter:

Monday

Dear Jim –

You have an excellent publicity agent!  
Each edition of the local papers carries  
Donovan specials—"piercing pale blue eyes."  
The [Washington] Post [, Times Herald] keeps your age at 40,  
while the  
[Washington] Star has pegged you at 45. Both  
refer to you as a prominent New York  
attorney—such are AP accounts, and  
far more thorough than the [New York] Times story  
on Sunday, which had a Washington  
dateline. Pictures on Sunday. Your  
voice over a local [radio] news broadcast  
before work this morning. Now if I  
had a modern TV set instead of an  
antique job, I might actually  
see you. Your fan mail probably  
has already begun coming in—along  
with this one—and the lunatics  
will soon start writing. Bet you'll  
have to hire a Kelly girl or two!

As for the Bridge stuff, well,  
well, well—

I can see it, hear it (the 3<sup>rd</sup> Man theme), feel it (the cold and the fear). I can't smell it though.

Hope you'll start your memoirs soon, and make a movie or two before you retire to Palm Beach. I find myself talking to myself—I knew you when.

Beyond the nonsense, above, I can't help wondering out loud, to you, by pen, whether the free world, the U.S.A., the Kennedys, the Congress, the people of the United States, everyone, the others and others included, realize the coup you've engineered and its significance to world peace. This could be the way back, or forward. How clever of you to have chosen a bridge.

(Incidentally, I thought you were behind the NYC [New York Central]–Pennsy [Pennsylvania Railroad] merger! Have you been all that busy these past 6 months?)

I hope the days ahead bring a large measure of happiness.

Sincerely,

Miss Jean T. Torgerson<sup>5</sup>

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I am confident that all concerned—beginning with Jim Donovan, and including Abel, Powers, Torgerson, Bill Donovan and Jackson—would be delighted that the movie now exists.

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<sup>5</sup> Letter from Jean T. Torgerson to James B. Donovan, n.d. ["Monday," Feb. 12, 1962], in James B. Donovan Papers, Hoover Institution Archives, Stanford University, Stanford, CA, Box 26, Folder 68.