

Drafting and Redrafting the Nuremberg Opening (1945)

*John Q. Barrett**

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Justice Robert H. Jackson, a famously gifted writer, deserves that reputation. His writings are powerful and personal, and they came from him, not from ghost-writing assistants. To read Jackson is to hear his voice. In some instances, that is particularly easy because he spoke some of his writings, most famously at Nuremberg, to attentive audiences, cameras, and sound recorders.

Justice Jackson did, however, take input on his writing. Sometimes he worked from drafts written by others. More often, Jackson wrote his own first drafts. Then he would share them with trusted colleagues to get their comments while he continued to work on the draft.

Jackson valued written comments. He would work through them, addressing and incorporating comments that he found helpful as part of producing his next draft. Then he would share that, sometimes with the same colleagues, sometimes with new eyes. He would get more comments. He then would work through them as he continued to work on his draft...

Jackson's files are filled with drafts of individual letters, speeches, articles, books, and United States Supreme Court opinions. Some of these drafts, produced at a late stage in a given project, look a lot like he was starting over—he sometimes would rewrite significantly, including in ways that showed his mind changing about a particular matter. Jackson's writing, editing, and rewriting show his seriousness about his work, his high standards, and his pleasure in using his pen well as part of using his voice well.

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On November 21, 1945, seventy-five years ago, Justice Jackson, serving as U.S. chief prosecutor of Nazi war criminals following World War II, delivered his opening statement to the International Military Tribunal at Nuremberg. It is a lengthy, powerful, acclaimed, and enduring speech. It is a piece of Jackson's finest writing. He produced it through many weeks of intense work, with assistance and input from others.

Jackson began to work on his Nuremberg opening by early October 1945, as the indictment of the Nazi defendants, the charges that he would be prosecuting, were being drafted and finalized. He worked on his opening throughout that month.

One of Jackson's key assistants at Nuremberg, including as he worked on the opening statement, was his son and executive assistant, Ensign William E. (Bill) Jackson (USNR). On October 29, Bill Jackson commented that the draft opening statement was rough but good.

Justice Jackson continued to write and edit.

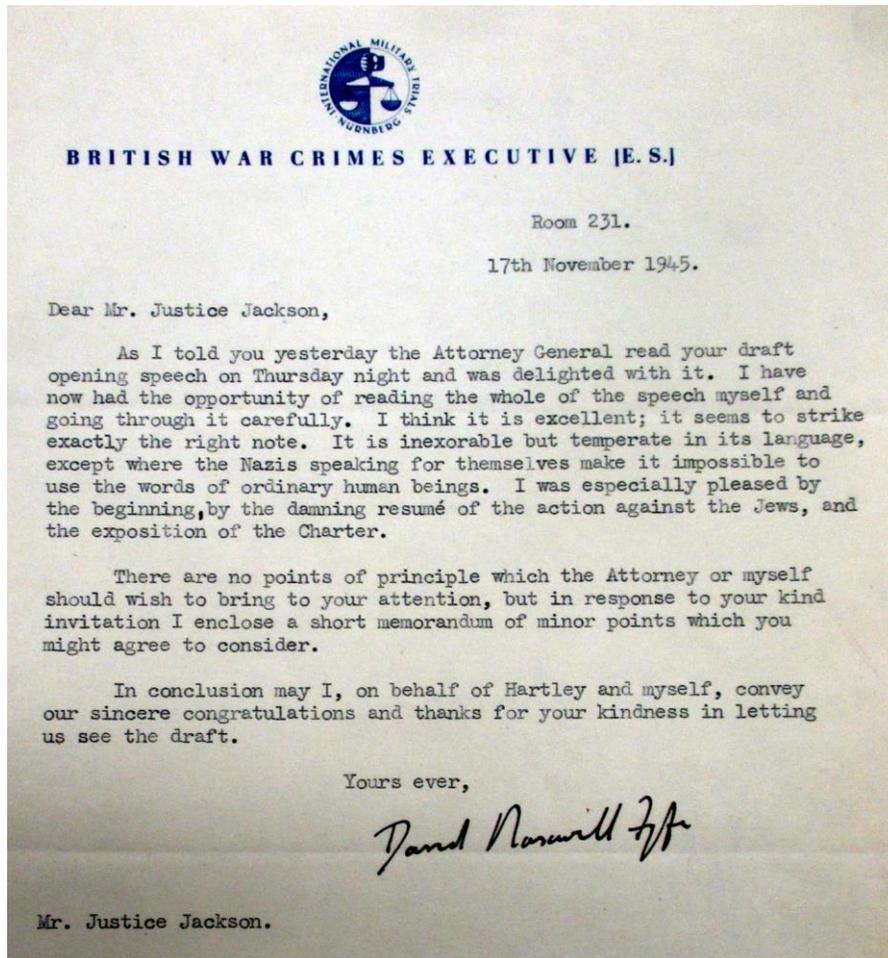
Two weeks later, on the evening of Thursday, November 15, he had Bill deliver to the United Kingdom's lead prosecutors, Hartley Shawcross and David Maxwell Fyfe, a copy of the Justice's lengthy draft opening statement.

Shawcross, the U.K. Attorney General and the U.K.'s chief prosecutor at Nuremberg, got to read it first. He did so immediately, and he was delighted. He told that to Maxwell Fyfe, the U.K.'s previous A.G. and its deputy chief prosecutor at Nuremberg, when he gave him Jackson's draft to read, and Maxwell Fyfe passed that compliment to Jackson when they met the next day.

On the night of Friday, November 16, or the next day, Maxwell Fyfe also read Jackson's draft.

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Before November 17 was done, Maxwell Fyfe sent written compliments to Jackson:



Maxwell Fyfe also gave Jackson what he valued highly, a memorandum of comments, flagging ambiguities in his draft and suggesting ways that it could be improved:

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17th November 1945.

MEMORANDUM.

A. Page 1.

We shall check with the Foreign Office the figures of adherence in case any last minute communications have been received.

B. Page 5.

At the foot you say "If these men should succeed in escaping this trial for technical reasons, or if they obstruct or abort it, those who are American prisoners would be turned over to our Continental Allies". The Attorney and I were not quite clear as to what was meant by "obstruct or abort" as opposed to securing the acquittal on technical grounds as there are stringent provisions under Article 18 of the Charter preventing sabotage. We thoroughly agree, however, with the idea of conveying to the defendants that if they got 'out of our frying pan', they might 'jump into a Polish or Yugoslav fire' . . .

C. Page 35.

There are some very good photographs of the thousands of Jews who were arrested arriving at Concentration Camps - the facts which you mention on that page.

D. Page 37.

It would be effective if you could say to whom the Commissioner of Slusk was reported. If it be the case, indicating to what defendant it would apply.

E. Page 39.

Similarly, it would be interesting to know who was Becker's supervisor in Berlin and whether it would reach Kaltenbrunner.

F. Page 42.

It would be interesting to know what happened on the protest of the Minister of Justice and who he was. The Minister himself is fixed with knowledge at that date in 1935, and we know that the Camps got progressively worse for ten years.

G. Page 44.

Where did Rascher's report go to? Can it be shown that it probably reached a defendant?

H. Page 49.

There are, I think, two typists slips here: In line 4 the date should be November 5th, and in line 5 it was not the defendant Fritzsche but von Fritch who was present at the meeting.

This is a very small bag but I think it is very important to show, as you have sought to show, how the defendants in the Dock are directly responsible for certain of the grosser specific atrocities in that they had knowledge of them from official sources, as well as having imputed to them knowledge and approbation of the system of atrocities from the extent, universality and duration of the latter.

J.N.F.