

TRANSLATION BY  
Herma Plummer

*Schlabbrendorff*  
*see defendant*

2 November 1945

62,01

~~23~~

23

TO: General Donovan

FROM: Dr. v. Schlabbrendorff

SUBJECT: Defense of the Accused

Yesterday and today I had an opportunity to talk to three of the German defense counsel. They were three attorneys from Berlin; Dr. von Luedinghausen, and Dr. Viereck. They all are attorneys with an excellent reputation. They had talked to JODL and SCHACHT (Dix), NEURATH (von Luedinghausen), and FRICK (Viereck). All attorneys anticipated technical difficulties, concerning the taking over of the defense. These difficulties are principally the following:

1. They see no sufficient guarantee to travel unhindered between Berlin and Nurnberg.
  - a. Dependence of plane traffic on the weather.
  - b. In automobile travel there are missing
    - I. Identity card which will be recognized by the Russians when traveling through the Russian occupation zone.
    - II. Furnishing of an accompanying officer who will protect the attorneys from untoward accidents.
2. There is no liaison officer whose exclusive task it would be to take care of the defense counsel:
  - a. With regard to adequate billeting in Nurnberg (bed, desk, proper lighting).
  - b. Possibility to bring along a secretary in order to prepare the defense and to formulate defense briefs.
  - c. Concerning the establishment of liaison with the court and the prosecution concerning the development of the court trial.

All of the defense attorneys claim that the general secretary (?) knows nothing and makes a completely helpless impression.

3. There is no guarantee concerning the question of a fee. This is important since all assets of the accused have been seized.

The attorneys have asked for a clarification of these questions and to inform them of the results so that they can definitely decide whether they will take over the defense or not.

With regard to the indictment the attorneys are of the opinion that it is superficial and by-passes the legal problems. Principally there is a lack of precision.

The fact that the prosecution and the court are composed of members of four different nations, makes it probable that disputes will arise between the representatives of the various nations, which will turn out to be of benefit to the accused. It may be assumed that defense counsel will try to base its tactics on such a fact.

By and large, defense counsel will proceed as follows:

1. The defense will contest the statements of fact as contained in the indictment and will thereby force the court to furnish proof. Consequence, long duration of the trial, possibility of confusion, impossibility of furnishing proof.
2. Defense counsel will accuse the prosecution of lack of concrete evidence concerning the facts alleged.
3. The defense will claim that the prosecution violates the basic principle of "nulla poena sine lege". It will emphasize the problematic aspects which are inherent in the indictment from the point of view of international law.
4. The defense will claim that the accused had in their favor the principle of active repentance
  - a. The accused have prevented many crimes planned by Hitler
  - b. The accused have done everything in order to depose Hitler
5. Insofar as the accused are guilty, they acted under orders.
6. The accused have perhaps caused the crimes of Hitler, but they are not guilty of such crimes. Insofar as they may have been guilty of such crimes, it was a case of negligence, not however of intent. Negligence would not be a sufficient reason to convict them. In order to convict them of criminal conspiracy, intent, if not premeditated design will have to be proved.

The defense of the accused will take the following stand in the cases of the four defendants mentioned below:

1. JODL - I was a soldier. As such I had to obey orders. What would Stalin have done to a general who refused obedience to an order?
2. SCHACHT - I stood for Hitler only up to 1937. Up to that time I considered it in order to finance the armament program of the German Government for defensive purposes which would raise Germany to the status of a power with equal rights. When I recognized that Hitler was steering toward war, I resigned and have, beyond that, done everything in order to overthrow Hitler. This happened at a time when Chamberlain fulfilled Hitler's demands with respect to foreign policy.
3. NEURATH - I am responsible for Germany's foreign policy only up to 1937. Up to then I successfully did everything in order to prevent war. Up to then I worked with the agreement of England and France. When Hitler talked to me about war in 1937, I resigned. As Protector of Czechoslovakia I had no power over police or economy. When my influence continued to decrease, I resigned.
4. FRICK - As minister as well as Protector of Czechoslovakia I had no power over the police. My administration was a legal one. I was forced by Hitler to put my signature to certain laws.