

Lighting the First Candle: Holocaust Film and Chanukah at Nuremberg, 1945

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As we close a week that included the Iranian government's historically and morally absurd conference purporting to examine whether there was a Holocaust, it is well to remember that undeniable knowledge of the Holocaust is rooted deeply in the work 61 years ago of Justice Robert H. Jackson and his United States and Allied colleagues at Nuremberg, Germany.

On October 6, 1945, Justice Jackson and his counterpart chief prosecutors from France, the Soviet Union and the United Kingdom signed at Berlin the indictment on which Nazi defendants soon were brought to trial at Nuremberg before the International Military Tribunal. The indictment charged twenty-four persons and six organizations with the principal crime of engaging in a common plan or conspiracy to commit crimes against peace, war crimes and crimes against humanity. The indictment also charged most defendants with specific crimes against peace, war crimes and crimes against humanity.

This indictment was the first governmental document to use the new word "genocide." The indictment charged the Nazi "annihilation" of European Jewry in stark, numerical terms: "Of the 9,600,000 Jews who lived in parts of Europe under Nazi domination, it is conservatively estimated that 5,700,000 have disappeared, most of them deliberately put to death by Nazi conspirators. Only the remnants of the Jewish population of Europe remain."

On November 21, 1945, Jackson delivered his opening statement before the IMT at Nuremberg. In a long section captioned "Crimes Against the Jews," Jackson described what the evidence would show:

The most savage and numerous crimes planned and committed by the Nazis were those against the Jews. Those in

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Germany in 1933 numbered about 500,000. In the aggregate, they had made for themselves positions which excited envy, and had accumulated properties which excited the avarice of the Nazis.

They were few enough to be helpless and numerous enough to be held up as a menace.

Let there be no misunderstanding about the charge of persecuting Jews. What we charge against these defendants is not those arrogances and pretensions which frequently accompany the intermingling of different peoples and which are likely, despite the honest efforts of government, to produce regrettable crimes and convulsions. It is my purpose to show a plan and design, to which all Nazis were fanatically committed, to annihilate all Jewish people. These crimes were organized and promoted by the Party leadership, executed and protected by the Nazi officials, as we shall convince you by written orders of the Secret State Police itself.

The persecution of the Jews was a continuous and deliberate policy. It was a policy directed against other nations as well as against the Jews themselves. Anti-Semitism was promoted to divide and embitter the democratic peoples and to soften their resistance to the Nazi aggression. ...

Anti-Semitism also has been aptly credited with being a "spearhead of terror." The ghetto was the laboratory for testing repressive measures. Jewish property was the first to be expropriated, but the custom grew and included similar measures against anti-Nazi Germans, Poles, Czechs, Frenchmen, and Belgians. Extermination of the Jews enabled the Nazis to bring a practiced hand to similar measures against Poles, Serbs, and Greeks. The plight of the Jew was a constant threat to opposition or discontent among other elements of Europe's population—pacifists, conservatives, Communists, Catholics, Protestants, Socialists. It was in fact, a threat to every dissenting opinion and to every non-Nazi's life.

The persecution policy against the Jews commenced with nonviolent measures, such as disfranchisement and discriminations against their religion, and the placing of impediments in the way of success in economic life. It moved rapidly to organized mass violence against them, physical isolation in ghettos, deportation, forced labor, mass starvation, and extermination. The Government, the Party formations indicted before you as criminal organizations,

the Secret State Police, the Army, private and semi-public associations, and "spontaneous" mobs that were carefully inspired from official sources, were all agencies that were concerned in this persecution. Nor was it directed against individual Jews for personal bad citizenship or unpopularity. The avowed purpose was the destruction of the Jewish people as a whole, as an end in itself, as a measure of preparation for war, and as a discipline of conquered peoples.

The conspiracy or common plan to exterminate the Jew was so methodically and thoroughly pursued, that despite the German defeat and Nazi prostration this Nazi aim largely has succeeded.

Only remnants of the European Jewish population remain in Germany, in the countries which Germany occupied, and in those which were her satellites or collaborators. Of the 9,600,000 Jews who lived in Nazi-dominated Europe, 60 percent are authoritatively estimated to have perished. Five million seven hundred thousand Jews are missing from the countries in which they formerly lived, and over 4,500,000 cannot be accounted for by the normal death rate nor by immigration; nor are they included among displaced persons.

History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated cruelty.¹

In the ensuing, early days of the trial, the United States presented much of its evidence concerning the first and central count in the case, the common plan and conspiracy to commit crimes against peace, war crimes and crimes against humanity. The evidence consisted of voluminous Nazi documents that had been captured, translated, analyzed and organized by the Allies. The evidence was summarized in trial briefs that Jackson's senior assistants read before the IMT, the defendants and, given the public nature of the trial, the world press corps.

On the afternoon of Thursday, November 29, 1945, which was the eighth trial day, Jackson's assistant Sidney S. Alderman announced to the Tribunal that he would at that point present motion picture evidence. Thomas J. Dodd, another U.S. prosecutor, explained that the evidence, which had already been screened for defense attorneys, was

¹ II TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946 ("The Blue Set") at 118-19 (proceedings of Nov. 21, 1945), reprinted in ROBERT H. JACKSON, THE CASE AGAINST THE NAZI WAR CRIMINALS 33-35 (1946) and in ROBERT H. JACKSON, THE NÜRNBERG CASE 52-54 (1947).

documentary film on concentration camps. This is by no means the entire proof which the prosecution will offer with respect to the subject of concentration camps, but this film which we offer represents in a brief and unforgettable form an explanation of what the words "concentration camp" imply.²

Dodd then introduced his colleague Commander James B. Donovan (USNR). "The United States," said Donovan,

now offers in evidence an official documentary motion picture report on Nazi concentration camps. This report has been compiled from motion pictures taken by Allied military photographers as the Allied armies in the West liberated the areas in which these camps were located. The accompanying narration is taken directly from the reports of the military photographers who filmed the camps.

While these motion pictures speak for themselves in evidencing life and death in Nazi concentration camps, proper authentication of films is contained in ... affidavits...³

(The affidavits include Jackson's own, which states that the films were made pursuant to an order issued by General Dwight D. Eisenhower.⁴ The affidavit of Lt. Col. George C. Stevens (AUS) explains his direction of the filming and the authenticity of the film.⁵ Lt. E. Raymond Kellogg (USN) swore to the unretouched nature of the images, U.S. Army Signal Corps's custody of the original films, and the fact that the excerpt that was about to be shown as trial evidence comprised 6,000 feet selected from 80,000 feet of film, "all of which is similar in character to these excerpts."⁶)

After the courtroom lights were dimmed, U.S. personnel played one hour of film. It primarily depicted concentration camp conditions,

² II TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946 (proceedings of Nov. 29, 1945) at 431.

³ *Id.* at 432-33.

⁴ See Affidavit of Robert H. Jackson, Nov. 23, 1945, *reprinted in* XXX TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946, at 459.

⁵ See Certificate & Affidavit of Lt. Col. George C. Stevens, Oct. 2, 1945, *reprinted in* XXX TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946, at 459-60.

⁶ Certificate & Affidavit of Lt. E.R. Kellogg, Aug. 27, 1945 (witnessed by Capt. John Ford), *reprinted in* XXX TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946, at 460-61.

including emaciated, brutalized survivors in the midst of many, many corpses, at the times of their liberation. It included movie footage of concentration camps at Leipzig, Peggib, Ohrdruf, Hadamar, Breendonck, Hannover, Arnstadt, Mauthausen, Buchenwald, Dachau and Belsen. It also included German photographs that had been captured by the Soviets, including photographs of mutilated concentration camp prisoners, of executions and mutilations of Slovenian partisans, and of Auschwitz. The film also included French photographs of tortured prisoners, bodies and concentration camp conditions.

During this film screening, many U.S. personnel, and especially those who already had viewed the film, watched the defendants to see their reactions. Budd Schulberg, for example, who played a central role in assembling the film, chose to sit at the Soviet prosecutors' table because it was adjacent to the defendants' box. All but one defendant viewed with rapt attention. Three became visibly disturbed by gruesome scenes in the film and a fourth refused to look at times. When the film concluded and the lights came up, Jackson saw three defendants in tears and Schulberg saw one wipe tears from his eyes. Another looked down into his lap and shook his head. A third leaned his forehead against the top of the dock. Two others looked wilted and spent. One leaned while two others stared straight ahead, unseeing. Another hid his face in his hands. Hermann Goering, the lead defendant, looked subdued, his face sagging. The presiding judge, Lord Geoffrey Lawrence of the U.K., saying nothing at all, adjourned the proceedings for the day. As the defendants were led from the dock to the elevator that would take them down into the prison, one remained sitting, doubled over with his face in his hands. As guards lifted him to his feet, his wet red eyes stood out from his white frightened face.⁷

A coincidence to consider, for today and for history, is that in 1945, November 29th on the Gregorian calendar was also, on the Jewish calendar, the 25th day of Kislev, the third month. It thus marked the first night of Chanukah, a holiday celebrating Jewish survival.

In the Nuremberg trial process, most participants were non-Jews. Many probably did not reflect on the coincidence, and frankly on the stark juxtaposition, of the showing of the concentration camp film evidence concluding as the sun set and Chanukah thus began. The film evidence also was, by itself, fully absorbing and deeply disturbing material for

⁷ See generally Budd Schulberg, *The Celluloid Noose*, THE SCREEN WRITER (Aug. 1946) at 1, 14.

reflection—Lord Lawrence was so upset that after court he initially could not take his tea; the American judges, Francis Biddle and John Parker, spoke that evening about how the film had horrified every judge.

But some “Nurembergers” were attentive to direct connections between their trial work and the circumstances in which the surviving Jews of Europe—the “remnants”—now lived. Major Joseph Dainow, for example, a lawyer on Jackson’s staff who had assembled key parts of the documentary evidence that Alderman had presented to the Tribunal earlier in the week, was a Jew who was, alongside his legal work, doing what he could to assist Jewish survivors in the immediate area.

On that Thursday evening, Major Dainow went to services at the synagogue in Fürth, just two miles from the Palace of Justice where the trial was occurring and the prisoners were held, for the lighting of the first Chanukah candle. Dainow, a father away from his own young children, gave the man in charge a package for the children of congregation. The package was filled with candy rations and chocolate bars that Dainow had been saving for weeks. The man was grateful but also concerned to comply exactly with Dainow’s wishes. Children “up to what age?,” he asked. No limit, Dainow replied, and he told the man to use his own judgment.

Tonight Jews around the world, including in Fürth and in Nuremberg and in Iran, will light the first Chanukah candle. May their candles, and all human judgment, burn brightly.