SECOND THOMAS J. ROMIG LECTURE IN PRINCIPLED LEGAL PRACTICE:

PRINCIPLED LEGAL PRACTICE BY JUSTICE ROBERT H. JACKSON AT NUREMBERG*

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Introduction

It is truly an honor for me to be invited to give this lecture. I will discuss the work of Justice Robert Houghwout Jackson, the United States Supreme Court justice who seemed, if I may, AWOL from 1945 to 1946. He was serving by appointment of President Harry Truman as the U.S. Chief of Counsel at Nuremberg, prosecuting Nazi war criminals. I will discuss how Jackson's work at Nuremberg fits the lecture, the model, and the inspiring professional legacy of principled legal practice.

I will approach this subject in four parts. First, I will briefly set the Nuremberg landscape. Second, I will orient you to Jackson. Third, I will traverse the chronology of the international Nuremberg trial, which was Jackson's trial. And fourth, I will discuss a number of episodes that I think illuminate this theme of principled legal practice.

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I. The Nuremberg Trials

Justice Robert Jackson served on the Supreme Court from 1941 until his death in October 1954. For him, those thirteen terms of the Court amounted to only twelve years of domestic judicial service because he missed an entire term of the Court spanning from 1945 to 1946 to serve as the U.S. Chief of Counsel at what became the Nuremberg trials.

As U.S. Chief of Counsel, Jackson was a hands-on, responsible point man for the United States. In many ways, that is not a bad working definition for what it means to perform principled legal practice. Jackson served full-time for more than fifteen months as the U.S. Chief of Counsel creating, at the time, the one and only International Military Tribunal. There were ideas of subsequent international Nuremberg trials, but by fall 1946, the alliance that had won the war had fractured into the early days of the Cold War, and the Western interest—principally U.S. and British—in doing additional international trials had ended.

Jackson returned to the Supreme Court, but the Nuremberg trials continued. The city of Nuremberg was in the American sector of military occupation in what had been Nazi Germany until its surrender in May 1945. In 1946 and later, the United States continued to control Nuremberg and to hold trials there. A member of Jackson's staff was U.S. Army Brigadier General Telford Taylor, a significant member during the international trials and Jackson's successor as Chief of Counsel. Taylor presided over twelve subsequent Nuremberg trials—U.S.-only trials, tried before American-only judicial benches. These were called the Nuremberg Military Tribunals, or NMTs, in contrast to the International Military Tribunal, or IMT. The NMTs were sector cases that built on, and followed on, the international proceeding. You know some of the NMTs: the Medical Case (involving Nazi doctors and horrific human experiments), the Judges' Case (portrayed in the film *Judgment at Nuremberg*), the Industrialists' Case, the Hostage Case, the Einsatzgruppen Case, and so forth. These twelve subsequent Nuremberg trials began in the fall of 1946 and continued until the spring of 1949.

So the Nuremberg trial landscape is thirteen trials in less than four years: one international trial, which was the Jackson trial, and twelve American-only trials, which were the Taylor trials.

II. Robert H. Jackson

Jackson's life ran from 1892 to 1954. He was born in northwestern Pennsylvania. He first lived on a family farm, and then his family moved to New York State. He grew up in a little town called Frewsburg, where he graduated from high school in 1909 as the valedictorian of a small class. He then commuted up the valley to Jamestown, New York, for a second senior year of high school at a bigger school with better teachers.

That is where Jackson's general schooling ended; he never attended a day of college. Instead, he became an apprentice to two lawyers in Jamestown followed by some graduate school. Although he matriculated for one year at Albany Law School, to get some book learning, that year was bracketed by two apprenticeship years. Those were his three years of law preparation. So, high school, a little bit of extra high school, zero college, two law apprentice years, and one law classroom year made him a lawyer at age twenty-one—in 1913, as soon as he was old enough and eligible to take the New York bar examination, he did so and passed.

Jackson became a lawyer based first in Jamestown, then Buffalo, then back in Jamestown, of increasing stature in his communities, in those counties, across New York State, and then nationally. He did municipal, civil, criminal, trial, and appellate work, representing all types of persons and businesses. His oil and gas work in Pennsylvania connected him with Texas lawyers. He became, through work in various bar associations and sections, the head of the American Bar Association House of Delegates in 1933. So, in twenty years, Robert Jackson went from being a twenty-one-year-old nobody lawyer in the boondocks to a quite acclaimed, significant, and still very young American private practice lawyer.

Jackson also was a Democrat. And in the late 1920s, what was first an acquaintance became political support that ripened into a friendship with Franklin D. Roosevelt when he first ran for Governor of New York. From 1928 forward, this relationship became Jackson's path to public service, building on his private law career.

Jackson worked for the New Deal in 1934. He was nominated by President Roosevelt and confirmed by the Senate for a series of increasingly major jobs. The first was General Counsel of the Treasury Department's Bureau of Internal Revenue. Then he moved to Department of Justice as the Assistant Attorney General heading the Tax Division and then the Antitrust Division. Jackson then became the Solicitor General of the United States, arguing about forty cases before the Supreme Court and

cementing his reputation as a brilliant advocate. In 1940, Jackson became the Attorney General of the United States. In 1941, he was appointed an Associate Justice of the Supreme Court. He was only forty-nine years old.

If political paths had taken other turns, Robert Jackson might well have been President Roosevelt's successor, at least as the nominee of the Democratic Party in 1940. President Roosevelt was planning to head home after two terms. That would have triggered fierce political jockeying among Democrats, and Jackson was a leading prospect and interested. So if President Roosevelt had, in fact, retired and anointed Jackson, a Jackson presidency might well have happened. But of course it did not. Global events, Roosevelt's third term campaign, his re-election—all those things came instead.

In July 1941, President Roosevelt signed Jackson's commission as an Associate Justice of the Supreme Court. Notice that in 1941 although World War II had already begun, the United States had yet to enter the fray. Jackson went to the Supreme Court because, candidly, President Roosevelt told him in private that he wanted Jackson to become the Chief Justice when the position opened.

Less than six months later, Japan attacked Pearl Harbor, Nazi Germany declared war on the United States, and Justice Jackson felt that he was in backwater. Jackson told President Roosevelt that he would resign his seat so that somebody else could be appointed to the Court and Jackson could return to the administration to do something more useful. Roosevelt, almost patting him on the head metaphorically, told Jackson that he was not much of a warrior and that this was not a time that needed a lot of civilian legal brilliance, but that there might be things that he was uniquely suited to do after the war.

Roosevelt, of course, did not live to see the end of the war, much less the Nuremberg trial. But perhaps that pivot from war fighting, indeed war winning, to law-reestablishing, and Jackson being useful in that, is what the President meant by that comment.

III. The International Nuremberg Trial

In the same time period, the Nazis began to consolidate power. After the Reichstag Fire decree in 1933, Hitler became a unilateral and unrestricted chancellor. Concentration camps were developed, dispensing with the formalities of traditional legal procedure to concentrate, arrest, and detain people who were "enemies of the Reich." That meant communists,

labor leaders, homosexuals, Jehovah's Witnesses, and, in large numbers, Jews. Dachau, a former munitions plant south of Nuremberg, on the north side of Munich, was visible and open to the world, visited by the Red Cross, and depicted in newspaper photos. The idea of power and might solving social problems through this kind of containment was not anathema to the world's eyes. To many, it was one path to government stability and success at that very challenging time.

The Nuremberg rally in 1935 promulgated the Nuremberg Laws. But do not get the idea that this was actual legislative activity. The Reichstag had been reduced to a rubber-stamp legislature, so this was really a Fuehrer decree regarding who was considered a citizen and who no longer was. This put in place a "three grandparent rule": if the Nazis identified three of one's grandparents as a Jew, that meant that person was a Jew. It did not matter if one's grandparents considered themselves Catholic, Lutheran, atheist, agnostic, or any other faith. This was a Nazi bureaucratic determination that individuals should be categorized as Jews and that people who descend from them are Jews. The consequences of this decree were that one was no longer a citizen of the Reich, that one was barred from professions and occupations, that property was confiscated, that excessive taxation was levied, and that people were driven to emigration or worse as the state was consolidated.

By 1942, the U.S. had entered the war. Of Hitler's many mistakes, very high on the list was declaring war on the United States, which led President Roosevelt in one of his fireside chats, as early as October 1942, to refer obliquely to the barbed wire being strung around the neck of the people in Europe and suggesting that perpetrators would be held accountable. He, of course, was not using terms like "Nuremberg," "rule of law," "prosecution," or "international trial," but it was an early pronouncement of the path.

In November 1943, the United States and its allies signed the Moscow Declaration, an agreement that once the Allied Powers prevailed militarily, they would together hold the Nazi arch criminals accountable for starting this world war. The arch criminals were those whose crimes did not occur at a particular location, but instead encompassed the enormity of Nazi Germany's perpetration and aggression as the warmonger.

At Yalta in February 1945, when a haggard President Roosevelt had two months to live, the Allied leaders briefly reiterated this commitment, that together they would hold the arch criminals responsible.

On 12 April, Roosevelt passed away and Harry Truman inherited this enormous responsibility. Among the many commitments and things he really did not know much about was this "hold them accountable" commitment. What Truman concluded, advised by Secretary of War Henry Stimson, White House Counsel Sam Rosenman, Assistant Secretary of War John McCloy, and many others who were continuity from the Roosevelt administration, was that this project was a law project that needed America's best lawyer.

And so the same month, Truman reached out to the Supreme Court and asked Justice Robert Jackson if he would become the U.S. Chief of Counsel. At the time, it was believed that Hitler would soon be captured; in the private discussions, Truman was asking Jackson to be the prosecutor in the trial of Hitler and his immediate inner circle. Jackson agreed. The last days of April were spent negotiating details.

By the time Truman announced Jackson's appointment publicly on 2 May, Hitler was gone, as was much of his inner circle. All that Jackson had been told—an international agreement had been reached; that a collective plan was in place; that evidence had been gathered; that it was kind of a turnkey operation that he, a U.S. Supreme Court Justice, could do during the summer of 1945—turned out to be smoke and bologna. And Jackson was on the hook. Harry Truman had this off his desk. It was Robert Jackson's face, talent, credibility, and vision that took this project forward.

What Jackson had to do first was diplomacy. In Church House, Westminster Abbey, during summer 1945, Jackson and his Allied counterparts thrashed out how they were going to do this. The appointment of Jackson did cause each of the other Allied nations—the United Kingdom, the USSR, and France—to appoint jurists of stature and high ability. But working out their different legal systems and coming up with an agreement on how to proceed took many, many weeks around a four-sided table. On one side, you had Jackson and his deputy, Major General William J. ("Wild Bill") Donovan, who was an old friend from western New York and, showing the project's nonpartisan face, a Republican. The other three sides were British, French, and Russian teams.

Pretty quickly it was a two-perspective, hard negotiation. There was an Anglo-American alliance, naturally, and the French were largely comfortable with the plans and the due process model that the Americans and the British wanted. The Soviets had a high commitment to a trial, but of the type that they were familiar with from the 1930s forward: a trial

against those whom we have decided are criminals, at which we will explain what they have done, at which they will confess what they have done, on the way to executing them. In other words, the Soviet model of show trial viewed the Moscow Declaration as not just the start of a plan, but as a verdict, as a pre-commitment to a trial that would end in executions. That was the fundamental show trial versus due process trial dispute that carried on for weeks.

In the meantime, Germany had become sectors of occupation. Generally, there was an adjacency principle under which the sector closest to the USSR was the Soviet sector, the sector closest to Great Britain was the UK sector, the sector along the French border was the French sector, and the central sector was the American sector. The American Army proposed Nuremberg as the site for this trial. It was not clear that it would be a four-nation trial, but it would at least be an American-British-French trial. So in July 1945, Jackson invited his counterparts on a weekend flight to visit Nuremberg to inspect the site. No Soviets were interested in joining. What Jackson and his guests found was a city that had been bombed to smithereens. The bombings of 1944 and 1945, targeting industrial production in Nuremberg, had leveled the whole Old City. But on the outskirts of the Old City was a largely intact courthouse and prison structure: the Palace of Justice, fronting on the Fürther Straße, and behind it a wheel-and-spoke design prison. This facility could accommodate this trial and subsequent trials, be they four-nation, three-nation, or American-only.

Jackson and his colleagues inspected the sites and agreed that they would work, but they still did not have an agreement with the Russians. The Potsdam Conference happened just a week after this inspection trip. Some credit is due to Josef Stalin: in the discussions of what was happening at London, Truman (his team briefed by Jackson) understood that there was an impasse and told Jackson to do what he thought was right, to hold his ground and insist on due process, and Stalin (through Vyshinsky and underlings) instructed the Russians that they would stay in this alliance.

That meant on 8 August 1945, the London Agreement was signed, creating the International Military Tribunal (IMT), the world's first international criminal court. This was not a court-martial structure as you know it. It was called the International Military Tribunal because there was no Germany. That piece of terrain was under military occupation. A tribunal functioning there was going to be a military occupation tribunal.

What the London Agreement created was a four-nation court, with each nation appointing a principal judge and an alternate. It defined four crimes as being within the jurisdiction of this tribunal: the waging of aggressive war, the commission of war crimes, the commission of crimes against humanity, and conspiracy or common plan or agreement to accomplish the foregoing. It defined, in an annexed charter of the International Military Tribunal, procedures that would guide this proceeding: it would be public; the jurists would not be under (or working for) the prosecutor; the prosecutors would carry a burden of proof beyond a reasonable doubt; the rules of evidence would be liberal; each defendant would get the indictment in written form thirty days before the trial would begin; each defendant would also be able to employ, at Allied expense, counsel of choice; and there would be compulsory process and liberal discovery, to facilitate defense counsel effectiveness.

With that agreement in place, the Allies relocated to Nuremberg in September 1945. The Palace of Justice did have cosmetic problems, but it was repaired. An annex connected to the main courthouse contained Courtroom 600, located on what we would call the third floor, distinguished by its four large windows. In Courtroom 600 sat twenty-one defendants, their counsel of choice, judges, and teams of national prosecutors. The IMT president judge was Lord Geoffrey Lawrence of the United Kingdom. Next to him was former U.S. Attorney General Francis Biddle, who had been Solicitor General under Jackson. So there was a bit of a role reversal, if you will: in the Department of Justice, Jackson had been the principal and Biddle had been number two, and now Jackson was a prosecutor before Biddle as a judge. To Biddle's left sat the chief judge of the U.S. Court of Appeals for the Fourth Circuit, Judge John J. Parker, who, like Jackson, went AWOL from his federal court for a year in this form of national service. In total, there were eight judges. The Soviet judges wore military uniforms. No principal judge became ill or had to depart, so no alternate stepped up. They functioned as a court of eight. They all sat, they all participated in deliberations, and they all ultimately contributed to the judgment.

Jackson opened the case on 21 November 1945. This was amazingly swift, in hindsight, although the public at the time was quite impatient; from 8 May until only 21 November was the time it took to get this whole operation worked out and off the ground. Jackson's opening statement was an eloquent, renowned, powerful, and principled statement. The defendants were the surviving principal representatives of each sector of

Nazi perpetration. Defendant number one was Hermann Göring, the Reichsmarschall, Hitler's number two. Rudolf Hess, number three in his heyday, was next to him. The foreign minister, Joachim von Ribbentrop, sat next to him. General Wilhelm Keitel, the head of the Wehrmacht, was next to him, et cetera. These were not all the major war criminals. Had they lived, in addition to Hitler, Himmler and Goebbels would have been in the box. Had he been known to be alive and captured, Adolf Eichmann would have been another defendant. But many defendants were principal perpetrators. And they represented the sectors—military, civilian, governmental, and private—that were part of the rise to power, the consolidation, the oppression, and then the war-waging that was Nazi Germany. Almost every defendant was charged with each of the four crimes: conspiracy, waging aggressive war known as "crimes against peace" at the time, committing war crimes, and committing crimes against humanity.

The trial was principally about the crime of waging aggressive war which earned this moniker in 1949. Along the way, the prosecutors also began to comprehend, while prosecuting atrocities as dimensions of the war, what we know as the Holocaust. I put it that way because Nazi concentration camps were no secret—such camps, in the west, had been liberated in spring 1945 by American soldiers. But the vast architecture of Nazi extermination, including not only concentration camps but also slave labor camps and extermination camps in the east, which had been plowed under and liquidated by the Germans in 1944 and 1945, got discovered, proven, and somewhat understood by prosecutors during the trial.

The commandant of Auschwitz, Rudolf Höss, was a fugitive until his apprehension by the British in early 1946. The Allies gave notice of this to the defense attorneys and one of them, although the prosecution cases had closed, called Höss to Nuremberg to testify. He explained what Auschwitz was and what he had done as commandant. One of the perversities of the trial, among many, was that Höss, we now know from Holocaust historiography, exaggerated what he viewed as his accomplishments. He claimed that he had gassed over 2 million people during his years as the commandant of Auschwitz. If he had completed the job of exterminating the Jews of Europe, he might have reached that number. But we now understand that the fact was approximately 1.2 million.

Jackson finished the trial work in July 1946, after a full Supreme Court term had passed without him. The IMT rendered judgments on twenty-one

individuals: eighteen were convicted and three were acquitted. Of the eighteen who were convicted, eleven were sentenced to death and seven were sentenced to terms of confinement ranging from ten years to life. The three acquitted men were given safe passage from the courthouse that night. This was not a show trial. Although acquittals stung in the moment for Jackson as the prosecutor—he thought two were unjustified—he felt proud, after reflection, of the cases he "lost" because they were tangible proof that this had not been a rigged proceeding.

The Palace of Justice has largely been turned over to history. Today, it houses the Memorium, a museum and a teaching center in and around Courtroom 600.

IV. Principled Legal Practice

I now turn to the Nuremberg legacy that is international law in addition to evidence of Nazi criminality.

I spent a fair amount of time in preparation for this lecture trying to reflect on, understand, and get inside the idea of principled legal practice. It is an argument for the rule of law. What that contains, however, is often unstated. The rule of law at one level is just a look to the positive, pre-existing decrees of a system that one is under or a part of. The Nazis, in other words, had law. So did the Confederacy. So did any regime, any system of order, that one could point to. And if the idea of principled legal practice simply means sticking to the positive law that exists (i.e., do not make progress in law and do not apply *ex post facto* things that do not exist in law), we have a static situation that could well be illustrious or could well be immoral. I think what principled legal practice means is just that—sticking to the positive law that exists. Valuing the rule of law is about *when* it is to be valued and, indeed, only when it is to be valued. And the reasons for putting valuation on law is that it coincides with, it persuades us that it meets our senses of fairness and right.

In that framework, alternatively, sometimes it is better to break with the past because past law has bad content. I will give you two examples. One is what the London Agreement declared to be the principal crime. The sovereign prerogative seen across history of waging war was no longer an option of national sovereigns; it was a crime to breach the peace. It had been so declared by the nations after the Great War. The Kellogg-Briand Treaty of many nations and the bilateral treaties of Germany (among others) with various nations, foreswore war as an option of national

behavior. And the London Agreement said we were delivering on that commitment with enforcement. A second category of law that was better to break with as a matter of principle was the law of violating human rights. The Allies viewed the Nazis' Nuremberg Laws not as law, but as evil and as criminality. In those situations—those break situations; those progress situations; those choice situations (and 1945 was, of course, a hallmark year for all of that)—rule of law meant moving our legal institutions to recognize better content. Principled meant the values, the ends, and also, in making those moves and taking those steps, a kind of visible, accountable, personalized process of acting on principle.

I suggest humbly that that is what Justice Jackson did as the U.S. Chief of Counsel. I will illustrate this in ten aspects presented chronologically across the time period in which he was serving in that appointment.

First, at the beginning, in April 1945, I do think that Jackson accepting the job, and when he learned it was a bill of goods just weeks later, sticking with this commitment in May 1945, was an illustrative aspect of principled behavior. It had significance for his country and the world. It was a request from his President, a good man and a newcomer to an unsought office. It dealt with perhaps the greatest scourge that human history contains—war itself, waged by perpetrators, by aggressors, on innocents. And so Jackson's stepping up when he had the comfortable job of all comfortable jobs was, if I may, a form of principled legal practice. And he did not know that it was going to work.

Second: In June 1945, after a first survey trip to the European Theater, Jackson returned to Washington to prepare to pack up and relocate for good. He wrote a private report to President Truman (soon released publicly) that was a great state paper. It was a description of the plan and it was really an early articulation of the due process model of holding these arch criminals accountable. Jackson said that there were alternatives. We could finish them off by executive action. We have the power, we have total control, and they have surrendered unconditionally. We could just call it a victory and let them slink away. Historically, that was the way wars often ended, with the victor aggrandized and the defeated disappearing into the woods. But neither of those would sit well. Letting the Nazis slink away would not sit well with the American and Allied publics that had paid such a cost to defeat this aggressor. And finishing them off, firing squads, executive actions in whatever numbers, "would not set easily on the American conscience or be remembered by our children with pride." Between those two options, what we have is what we

know and what we have built over our centuries: due process, fairness, public accountability, and leadership. And that was what Jackson proposed to do, which was exactly what Truman appointed him to do.

Number three: In July 1945, the work in London, the holding of that ground by Jackson, empowered by Truman to go the Russian way or to possibly start the Cold War, was a complex tactical choice but ultimately a values choice. And although there would have been, I think, a lot of emotional satisfaction in the short term in a show trial that finished off every defendant quickly, history's children (and grandchildren) would not have looked on that with pride.

A fourth moment, August 1945, related to the London Agreement's declarative components. The London Agreement declared two things. It announced that these crimes violate the international legal order. Never in one place had there been a document pulling these all together and then creating a tribunal with jurisdiction to adjudicate them. This announcement drew on the Hague conventions and preexisting laws of war crimes. It drew on the treaties forswearing war. It developed, out of concepts and no formal agreements, the idea of crimes against humanity. And it took an Anglo-American concept, conspiracy, and tried to get civil law minds to understand why agreement itself is such a danger. It took this stand in public, announcing that this is where we already are and this is where we will be. Its other declaration was that following orders is no defense. It is often, I think, misremembered that the Nuremberg trials concluded that following orders was no defense. In fact, the Nuremberg plan and the London Agreement *declared* that for the trials (and henceforth), following orders was no defense. There used to be total impunity: the head of state was immune from legal liability for war because it was a prerogative of sovereignty, and underlings were immune because following orders was something that one had no choice to avoid. The London Agreement declared that both of those notions were off the table and said we have progressed to different views.

Number five, in October 1945, was the trial plan. This led to a break between Jackson and Donovan. Jackson decided that this would not be a cooperator-based case. It would not be a swearing contest between witnesses. It would not be based in plea bargaining and deals. Instead, the captured German documents—unambiguous, authentic, and incredibly damning—would be the backbone of the prosecution case. Jackson had headed the Antitrust Division in the U.S. Department of Justice and been a top government tax law enforcer, so the document-based methods of those

civil proceedings were familiar to him. Perhaps employing them consciously, he built the Nuremberg case on Nazi documents. This really irked the reporters, which you can see in the press conferences and the reporting day to day. They wanted action. They wanted showdowns. They wanted speed. They wanted courtroom drama. But, of course, the record, what Nuremberg shows, what the Third Reich was, came right out of those documents, which amply justified the defendants' criminal convictions.

Sixth was Jackson's decision to give the opening statement in November 1945. Putting his face, his eloquence, and his commitment behind the declaration "The evidence will show…." got the world's attention on the front end of the trial. That was Truman's reason for choosing him, and that was Jackson's courage in going to that podium, with the preparation of his vast team and the analysis of what the documents would show.

Number seven: Defending Nuremberg as it went forward. I will note that the military in the United States was no fan, generally, of aspects of the Nuremberg trial. The *Army and Navy Journal* published a lacerating editorial critique in December 1945, stating that prosecuting military officers for conducting military affairs in traditional men-in-arms ways was an irresponsible, rigged, disgraceful enterprise. Robert Jackson, who could have ignored that view or suffered under it, took it on directly. And, so, the public relations side of his work, if you will, included explaining why people like Wilhelm Keitel, Alfred Jodl, Erich Raeder, and Karl Dönitz were facing judgment—because of individual conduct in violation of laws of war.

The eighth aspect occurred in winter and spring of 1946, during which Jackson had continuing, hands-on responsibility for this project. Although a chief could have stayed in the office and let underlings catch a lot of the courtroom flack, Jackson made legal arguments in court throughout the trial, handled witness examinations throughout the trial (including multiple defendants), and paid a professional cost by being away from the Supreme Court, which got increasingly irked as eight justices were doing the work of nine. Jackson also was open to letting the case evolve as new evidence emerged. This caused tension among the nations who were the prosecutors. For example, in spring 1946, the secret provisions of the 1939 pact between the USSR and Nazi Germany, the Molotov-Ribbentrop pact, were introduced by Ribbentrop as part of his defense. The Russians wanted this kept out of the trial and suppressed. Jackson would not sign on.

Ninth was Jackson's closing statement in July 1946. It was more bombastic than his opening the previous November. Closings can be that way. He stressed the personal guilt of the defendants. He did not condemn the German people as a whole; although there was much to be criticized there as a political culture in support of Nazism. Jackson explained that what trial work is about is carrying a burden of proof as a prosecutor and about individuals in the dock.

And, finally, tenth, Jackson for the rest of his life, 1946 through 1954, explained, taught, defended, reflected on, and reassessed what Nuremberg was. He did not duck back into domestic life. Yes, he did his Supreme Court day job quite brilliantly, but in speeches and writings he dealt directly with the hard critiques of Nuremberg. Was this victor's justice? Was this *ex post facto* criminalization and prosecution? Was this making up something that was just another weapon to defeat Nazi Germany? Jackson, as he had argued in court, argued and taught the public, including lawyers and the legal community, that there were satisfactory, legal, and principled ways to understand Nuremberg. And then, stepping back, Jackson said, "One of the chief obstacles to this trial was the lack of a beaten path. A judgment such as has been rendered shifts the power of the precedent to the support of these rules of law. No one can hereafter deny or fail to know that the principles on which the Nazi leaders are adjudged to forfeit their lives constitute law—and law with a sanction."

And so, by each of those measures, at least as I operationalize it, Jackson at Nuremberg is a case study in principled legal practice--not perfection, but one lawyer's visible, accountable, value-based, forward-moving work.

Conclusion

The photograph of Jackson as he left Nuremberg for the last time in October 1946, right after the IMT judgment was rendered, shows what I believe is a bit of relief on the face of someone who had completed unprecedented work. It was hard work, and he did it with everything he had. He was later recognized and decorated with the Medal for Merit by Secretary of War Robert P. Patterson.

Jackson had a nice phrase—he said that the meaning of Nuremberg will become clear in the "century run." That meant one hundred years out, long after he would be around to explain or defend it. In other words, history

hands Nuremberg down to us. And what you do as judge advocates is work in and on that century run.

Nuremberg is now seventy-five years old, so it is getting up there. But it is still vibrant, still developing. And it is increasingly meaningful because of what we do with it, our inheritance.

Thank you very much for your attention. It has been a high honor to give this lecture.