

## **The Defense of Hans Fritzsche**

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International Law PSCI 0236

Professor Morrison

5/3/2010 (8:00pm)

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Word Count: 2,300

Word Limit: 2,500

I have neither given nor received unauthorized aid on this assignment

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In response to the prosecution's indictment of defendant Hans Fritzsche on Count 1, Count 3, and Count 4, as stipulated by Article 6 of the Constitution of the International Military Tribunal at Nuremberg, the defense rejects these claims on the following grounds.

There is no precedent in the international legal order for the indictment of Hans Fritzsche. The nature of both domestically and internationally law strives for gapless legal order. While the international arena presents less clear rules, it is not in the courts purview. Indeed, nowhere in domestic legal systems or laws of human nature has the use of propaganda been deemed illegal. By trying Fritzsche with admittedly evil men we set a dangerous precedent. The prosecution of public media without just cause is contrary to the spirit of free speech expressed in the UN charter.

The task of this Tribunal is to correctly identify and understand the actions of each individual defendant and to apply a proportionate judgment. It is in the interest of this court to distinguish between true criminal masterminds and those who have fallen under their influence in pursuit of their professional practice. Its task is *not* to project the broader definition of Holmes's "bad man" onto those who lack criminal intent. This is an unacceptable generalization of the legal process that results in a vague moral precedent.

This Tribunal has been set up to try individuals for the express reason that trying a state is unreasonable and unproductive. This would not recognize the differences in responsibility for the war among common German citizens, obedient members of the military, minor government representatives, and heads of state. The defendant, Hans Fritzsche, has been indicted in place of those actually criminally responsible, most specifically, Joseph Goebbels. Unlike many of the admittedly guilty defendants, Hans Fritzsche was isolated from the criminal actions of the Nazi Party and is being unjustly prosecuted.

## **COUNT ONE: COMMON PLAN OR CONSPIRACY TO COMMIT**

The defendant Hans Fritzsche has been indicted on the charge of Conspiracy to Commit for his affiliation with the National Socialist German Workers Party (Nazi), of which he joined in 1933. The defense will show that the defendant is not guilty of said charge, and that his affiliation and actions within the Nazi party cannot be said to fall within the realm of criminal activity as deemed by the Charter of the Tribunal.

Let it be clear that, according to the Jurisdiction and General Principles of the Charter of the Tribunal, it is defined that the Crimes Against Peace includes the planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy of any of the foregoing.<sup>1</sup>

The prosecution maintains that, through his position as head of the German Press Division and the Radio Division of the Propaganda Department, Fritzsche was given effective control of the content of the domestic press. This claim by the prosecution in no way correctly reflects the actual structure of power in the Nazi propaganda system. It

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<sup>1</sup> Avalon Project, Nuremberg Trial Proceedings Vol. 1, Jurisdiction and General Principles, Article 6

was not the defendant Fritzsche who was in control of the dissemination of media in Nazi Germany, but his superiors, especially Joseph Goebbels and Otto Dietrich, who held complete control over the messages and outputs of the German propaganda. Hans Fritzsche was no more than a conduit through which Goebbels and Dietrich could express their anti-Semitic beliefs. Fritzsche had no control over the Nazi propaganda policies.<sup>2</sup> In his own personal essay, Fritzsche recounts his role relative to his superiors, noting that it was not himself, but rather Goebbels, that dictated the Nazi media flow. In Fritzsche's words, it was Goebbels that had the "task of being the constant intermediary between the Nationalist Socialist Reich government that sprang from the people, and the people."<sup>3</sup>

Furthermore, on the claim that the defendant Fritzsche joined the Nazi party with full understanding of its goals and a clear intent to help further those goals, the defense shows that this claim is false. Hans Fritzsche joined the party at a time when it had been democratically elected by the German people. The defendant never shared the anti-Semitic, aggressive beliefs of the party itself.<sup>4</sup> In fact he never, over thousands of radio and media broadcasts, at any point called for the extermination of the Jewish population. It should also be noted that, on two occasions, the defendant Fritzsche attempted to stop the publication of the German newspaper *Der Sturmer*, a strongly anti-Semitic paper. These facts prove that, despite his seemingly invested and devoted commitment to the Nazi party, Hans Fritzsche did not share the party's narrow ideals, beliefs or intentions.

The defense has hereby shown, through the use of the aforementioned evidence that the defendant Hans Fritzsche is not guilty on the charge of common plan or conspiracy to commit. To review, on the first charge of his affiliation and consolidation of Nazi party ideals, Hans Fritzsche did not accept nor pursue the party's core values. He had no knowledge of the party's true intentions, and a no point in his radio career ever came into direct contact with Adolf Hitler. Furthermore, on the second charge that the defendant Fritzsche knowingly and willingly spread hateful and inciting speech against the Jewish population, the evidence has clearly shown that Fritzsche had no control over the material released in his broadcasts and programs. The Nazi propaganda system had a constructed hierarchy, in which Fritzsche was inferior and Nazi officials such as Joseph Goebbels and Otto Dietrich. The Goebbels Ministry of Propaganda had tight control of all media, and the only information provided to journalists came from Goebbels's office, which was undeniably anti-Semitic.

For these reasons, the defense maintains that the defendant Hans Fritzsche is not guilty on the charge of common plan or conspiracy to commit.

### **THE TERMS OF COUNT THREE: WAR CRIMES**

The indictment on the charges of war crimes is similarly unfounded. Hans Fritzsche was in no way responsible for acknowledged crimes perpetrated by the Nazi party. The prosecution suggests falsified information disseminated by the defendant directly led to the perpetration of war crimes. There is no evidence, however, that

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<sup>2</sup> Judgment. Hans Fritzsche. Nuremberg Trials. The Avalon Project. June 26, 1945.

<sup>3</sup> Fritzsche, Hans. "Dr. Goebbels and his Ministry." German Propaganda Archive: 1934

<sup>4</sup> Transcript. Hans Fritzsche. Nuremberg Trials. June 26, 1945.

Fritzsche was aware of the reliability of his information.<sup>5</sup> Superiors including Joseph Goebbels gave strict directives regarding the content of the defendant's programming. There is no evidence to suggest involvement in the creation of the Nazi propaganda machine or individual authorship of concerted propaganda campaigns.<sup>6</sup>

The prosecution has provided four justifications for the indictment on the charges of war crimes:

#### Purveyance of Racial Hatred

In fact, there are documented efforts of the defendant to control the level of racial rhetoric being encouraged by the idealists in the party. Affidavits from fellow Counselors in the Propaganda ministry reveal that Fritzsche rejected both the concept and the term of a "master race". This conviction was great enough that the use of the term was expressly prohibited on the radio.<sup>7</sup> His personal anti-Semitism was far less radical than party leaders and was isolated from broadcasts. The prosecution cites control over racist publications like Julius Streicher's *Der Sturmer* as an incitement of war crimes. In fact, *Der Sturmer* was beyond Fritzsche's control and he made two unsuccessful efforts to prohibit its publication. Furthermore, in 13 years Fritzsche did not once quote the inflammatory bulletin.<sup>8</sup> The defendant has successfully shown that while information disseminated by the German Press Division acknowledged racial divisions it never expressly advocated racial hatred. The International Criminal Tribunal for Rwanda has stressed the importance of this distinction. The Akayesu Trial Chamber of that court, considered it critical to distinguish between the discussion of ethnic consciousness and ethnic hatred when assessing responsibility for war crimes.<sup>9</sup>

#### Wrongful accusation of opposing forces of the commission of war crimes

There is little evidence of wrongful accusations within the evidence submitted by the prosecution. The one example provided regards the Commissar Order to kill captured Russian military leaders. Fritzsche was not consciously involved in any deception. The efforts to ascribe German atrocities to Russians were opposed by Fritzsche actively sought to investigate and stop the order.<sup>10</sup> As discussed previously, information disseminated regarding the military actions of both German and Allied Forces was provided to the defendant with no qualifications. There is no evidence to suggest fabrication originated with Fritzsche's broadcasts.

#### Incitement of the commission of war crimes

The prosecution claims the defendant encouraged the ruthless exploitation of occupied territories. The quotations cited by the prosecution are ambiguous. Fritzsche's expressed

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<sup>5</sup> Judgment. Hans Fritzsche. Nuremberg Trials. The Avalon Project. June 26, 1945.

<sup>6</sup> Judgment. Hans Fritzsche. Nuremberg Trials. The Avalon Project. June 26, 1945.

<sup>7</sup> Transcript. Hans Fritzsche. Nuremberg Trials. June 26, 1945.

<sup>8</sup> Transcript. Hans Fritzsche. Nuremberg Trials. June 26, 1945.

<sup>9</sup> Kagwi-Ndungu, Charity. The challenges in prosecuting print media for genocide. [http://www.idrc.ca/rwandagenocide/ev-108292-201-1-DO\\_TOPIC.html](http://www.idrc.ca/rwandagenocide/ev-108292-201-1-DO_TOPIC.html)

<sup>10</sup> Transcript. Hans Fritzsche. Nuremberg Trials. June 26, 1945.

desire to utilize the vast breadth of the German empire may be, as he claims, a political and economic wish, not military. This is clear in his statements that encourage “the utilization of the productive capacity of the occupied countries for the strengthening of the war effort.”<sup>11</sup> The indictment’s assertion that Russian’s were characterized as subhuman is not substantiated in the documentary evidence.<sup>12</sup>

Facilitation and incitement of purveyance of racial hatred, wrongful accusation of opposing forces and incitement of war crimes.

This charge is redundant. It has already been demonstrated that Fritzsche had limited, if any, influence over the, anti-Semitic tendencies of the unaffiliated news agencies cited by the prosecution.

In response to the prosecution’s indictment of defendant Hans Fritzsche on Count 4, Crimes Against Humanity as stipulated by Article 6 of the Constitution of the International Military Tribunal at Nuremberg, the defense rejects this claim on the grounds of the following grounds.

**THE TERMS OF COUNT 4: CRIMES AGAINST HUMANITY**

Article 6(c) of the Charter of the International Military Tribunal defines crimes against humanity as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war”.<sup>13</sup> The defense recognizes the anti-Semitic import of the defendant’s news broadcasts. However it reminds the court that the defendant never advocated the actions listed above. In addition, he was never an active participant in the physical atrocities of the Second World War. Article 6(c) also cites “persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated” as crimes against humanity. These actions do not apply to the defendant. In the first case, the defendant never participated in the formulation of the policies that led to these atrocities: “Never did he achieve sufficient stature to attend the planning conferences which led to aggressive war; indeed according to his own uncontradicted testimony he never even had a conversation with Hitler.”<sup>14</sup> Under Goebells’ supervision, the defendant was “merely a conduit to the press of the instructions handed him by Dietrich.”<sup>15</sup> Moreover, the defendant attempted to prevent the dissemination of the truly extreme propaganda contained in Julius Streicher’s “Der Sturmer”.<sup>16</sup>

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<sup>11</sup> Hans Fritzsche. Jewish Virtual Library.

<http://www.jewishvirtuallibrary.org/jsource/Holocaust/Fritzsche.html>

<sup>12</sup> Judgment. Hans Fritzsche. Nuremberg Trials. The Avalon Project. June 26, 1945.

<sup>13</sup> Charter of the International Military Tribunal.” *The Avalon Project*.

<sup>14</sup> Judgment. Hans Fritzsche. Nuremberg Trials. The Avalon Project. June 26, 1945.

<sup>15</sup> Judgment. Hans Fritzsche. Nuremberg Trials. The Avalon Project. June 26, 1945.

<sup>16</sup> Assessing Guilt.” *Holocaust Encyclopedia*. The United States Holocaust Memorial Museum. 1 April 2001

### The Right to Personal Expression

The persecution charges that “as part of the propaganda machine, [Fritzsche] aggravated the status of Jews by labeling them as a threat. Thus, Fritzsche created a climate rampant with persecution and discrimination.” The defense argues that Fritzsche was not acting outside of his legal bounds as a nationalist, nor was he solely responsible for the socio-political climate in Germany under the Third Reich. The prosecution has listed Fritzsche’s association with the NSDAP as evidence of his threatening nature. As the defendant has stated, however, the NSDAP was an aggregate of various nationalist aims at the time of his joining, and his reasons for joining were based on his sense of hope for his country’s better future.<sup>17</sup> As a German nationalist the defendant exercised his interest in a unified country through his rights to free expression and nationality.<sup>18</sup> The German people had similar rights, as well as their rights to equality, information, and to remain free of any association.<sup>19</sup> If this Tribunal holds its defendants accountable for their actions in the oppressive context of the Nazi German state, then it will admit that the people of the German state are also liable for their response to the news reports of one man. As a journalist, Fritzsche conveyed the spirit of the times as it was determined by Hitler’s government. The people of Germany had the right to make their own decisions. Fritzsche supported this by encouraging his critics, with whom he held an extensive correspondence, a gesture that was rare during the Third Reich.<sup>20</sup>

### Duress

The contents of Fritzsche’s reports were carefully designed according to the guidelines given to him by Dr. Goebbels.<sup>21</sup> These guidelines dictated what kind of news could be disseminated and in what way.<sup>22</sup> They were enforced with the threat of firing dissenters or sending them to a concentration camp.<sup>23</sup> The defense argues that the defendant acted under duress, and that this is a legitimate defense as per the argument of Judge Cassess in the case of Drazen Erdemovic that international law does not provide a stipulation to the contrary.<sup>24</sup>

### Lack of Transparency

In the above sections, the defense argues that Fritzsche was never directly related to the planning or executing of the atrocities that have led to the establishment of this Tribunal. The defense adds that there is no evidence “showing that he was informed of the decisions taken at these conferences.”<sup>25</sup> It is commonly known that Hitler’s administration did not manifest transparency. The activities in the Nazi concentration

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<sup>17</sup> *Appendix: Complete Hearings of Hans Fritzsche. Nuremberg.*

<sup>18</sup> Epps, Valerie.. *International Law*. 4<sup>th</sup> ed. Durham: Carolina Academic Press, 2009. 295

<sup>19</sup> Epps, Valerie. 297

<sup>20</sup> *Appendix: Complete Hearings of Hans Fritzsche. Nuremberg.*

<sup>21</sup> “The Press in the Third Reich.” *Holocaust Encyclopedia*. The United States Holocaust Memorial Museum. 1 April 2001. Accessed 29 April 2010.

<sup>22</sup> “The Press in the Third Reich.” *Holocaust Encyclopedia*.

<sup>23</sup> “The Press in the Third Reich.” *Holocaust Encyclopedia*.

<sup>24</sup> Epps, Valerie. 437

<sup>25</sup> Judgment. Hans Fritzsche. Nuremberg Trials. The Avalon Project. June 26, 1945.

camps were covered up by propaganda generated within the camps themselves; since the daily news came to Fritzsche through Goebbels, the head of the Propaganda Ministry, accurate information regarding these atrocities was clearly unavailable to Fritzsche.<sup>26</sup> Towards the end of the war, Fritzsche tried to dissociate himself from the rumored atrocities by agreeing to stay in his position on the condition that Goebbels inform him should Hitler cease the use of diplomacy to resolve the war as soon as possible.<sup>27</sup> Clearly, superiors misled the defendant.

Thus, the Defense rejects the prosecutions indictment on all three counts.

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<sup>26</sup> "Nazi Propaganda." *Holocaust Encyclopedia*. The United States Holocaust Memorial Museum. 1 April 2001. Accessed 29 April 2010.

<sup>27</sup> *Appendix: Complete Hearings of Hans Fritzsche. Nuremberg*. Accessed 30 May 2010.

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