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Recd

Office of Theater Judge Advocate

19 October 1945

The United States Chief of Counsel  
for Prosecution of Axis Criminality  
APO 403, U. S. Army

My dear Mr. Justice Jackson:

General Eisenhower directs that I invite your attention to the directive he has received on the "Identification and Apprehension of Persons Suspected of War Crimes or other Offenses and Trial of Certain Offenders", Annex to Appendix "A" to Enclosure "B", JCS 1023/10 of 8 July 1945. It seems evident that any plan for the accomplishment of the mission there outlined must be made in concert with yourself and must take account of your own field of action under Executive Order No. 9547. Accordingly, he has directed that, together with the Legal Adviser of the Office of Military Government for Germany (U.S.), I present the entire problem to you in order that suitable action may be prepared for its solution. I am instructed that the plan should recognize every aspect of the problem, such as the trial of the cases of membership in original Nazi organizations and the treatment of persons now held in custody awaiting such trial. It is recognized at this headquarters that the terms of JCS 1023/10 lay upon the Theater Commander a task of truly gigantic proportions; and it is felt that we must respond to the War Department, without delay, explaining candidly how much it is believed possible to do and how it is proposed to do it. In arriving at this response your advice is considered essential and, without wishing to appear exigent, the Theater Commander hopes that an agreement can be reached at our conference beginning today.

Procedures now in operation take care of only a portion of the field of JCS 1023/10:

- (a) the International Military Tribunal, as to those indicted therein; and
- (b) the War Crimes Branch under the Theater Judge Advocate (see WFO ltr of 24 Feb 1945, AG 000.5 Op JA, "Establishment of War Crimes Branches"), as to specific offenses against the laws of war, including atrocities against civilian internees held in concentration camps as an incident of belligerent control.

It seems evident that someone must be designated at once to bear responsibility for such further prosecution as is to be carried on

*Let us all this*

under the mandate of JCS 1023/10. And it is believed that considerations of continuity of effort, expert knowledge, and public responsibility and confidence already established point to the Office of the United States Chief of Counsel as the agency upon which reliance should be placed. Preparation for the trial of the present indictment before the International Military Tribunal has, no doubt, disclosed many other Nazi crimes with which your staff are best able to deal. You have developed a conspicuously competent group, and it would take a long time to effect a new organization approaching it in effectiveness. As a going concern it is invaluable in the prosecution of further cases against Nazi criminals. It is hoped that its strength may be made available for the entire effort.

Two possible arrangements for the execution of the new mission are suggested for your consideration. Under the first and preferred solution, the present Chief of Counsel would be given responsibility for extending his activities beyond the first big case brought in the International Military Tribunal, so that he would have direction over the prosecution of members of criminal groups, as well as for developing and presenting the cases against Nazi offenders other than those embraced within the judgment of the International Military Tribunal. In view of the difficulties of proceeding before the quadripartite International Military Tribunal, it seems desirable that any further prosecutions be brought before our own Military Government Courts in the United States Zone. Selected personnel and special procedures may be utilized as found appropriate. Since Executive Order 9547 is limited to prosecution "before an international military tribunal", that Order would have to be extended.

If this proposal is rejected, then it is proposed that a Special Prosecutor for Nazi Crimes be appointed at once, preferably from within the existing organization of the Office of United States Chief of Counsel. He would plan for and then carry out such further prosecutions of Nazi offenders as should be brought before Military Government Courts in the United States Zone. He should build up a proper staff, working close by the existing Office of United States Chief of Counsel, and absorbing such of its personnel as are released and might be retained. Thus the new organization would grow out of the old, taking advantage of its existing arrangements, utilizing its collection of material, following up the leads which had been opened in preparing for the big case in the International Military Tribunal. The level on which the Special Prosecutor should be appointed has been considered; also his relation to the Office of Military Government for Germany (U.S.). One possible solution is that the Special Prosecutor be appointed by Theater Headquarters and be the head of a Division in the Office of Military Government, clearing to the Deputy Military Governor through the Legal Adviser. Perhaps the imperative nature of his mission might be emphasized and the position of the Special Prosecutor enhanced by a personal letter from the President "drafting" the person chosen for the task and assuring him of support and confidence. It is clear that in any case the Special Prosecutor must be assured that an absolute priority will be given to whatever is required to do the job - subject, of course, to the understanding that your own operation must not be prejudiced thereby.

Attached hereto is a memorandum for the Theater Judge Advocate, subject "Organization for Proceeding Against Axis Criminals and Certain Other Offenders", 16 October 1945, by Colonel Fairman. On essential points this paper reflects in general views entertained by this headquarters, and it is brought to your notice as affording a basis for our discussions.

In accordance with General Eisenhower's instructions, I will present, early next week, a staff study recommending the action proposed to be taken by this headquarters on JCS 1023/10. Your counsel and cooperation in this connection will be sincerely appreciated.

Sincerely yours,

ED. C. BETTS,  
Brigadier General, U.S.A.,  
Theater Judge Advocate.