

SECRET

30 May 1945

(3)

MEMORANDUM

TO: Mr. Sidney S. Alderman
FROM: Lt. James B. Donovan
SUBJECT: Progress Report on Preparation of Prosecution

1. This report is intended to serve as a summary of those aspects of the prosecution on which I am responsible to you by direction of Mr. Justice Jackson. It will outline primarily the progress made since 23 May 1945, on which date we received a copy of the approved Planning Memorandum.

2. The basic task of organizing the prosecution is essentially completed, insofar as OCS facilities here and overseas are concerned. This includes (a) the allocation of specific responsibilities within the agency for constructing the various parts of the prosecution's proof, (b) the procurement of any additional personnel required to discharge those responsibilities, and (c) completion of a program designed to assure the rapid integration and effective presentation of a carefully documented case. It also includes a re-assessment of relations with the War Crimes Office and a survey of the evidence necessary, the evidence available, and the best methods of acquiring what we lack.

3. The Research and Analysis Branch (lawyers of all nations, political scientists, economists, historians, etc.) has undertaken the preparation of (a) detailed outlines of what are conceived to be the two major projects required for proof of the prosecution, (b) preparation of a series of approximately 25 trial briefs on the component parts of the case, (c) preparation of proposed findings of fact based upon the foregoing, (d) a tentative list of major German war criminals, compiled on the basis of the Planning Memorandum and the implementing work already done, and (e) a "trial run" on the case against Goering. With respect to these matters:

a) The first detailed outline, a careful study of the German organizations guilty of criminal acts, and their leaders, is now completed and is attached (Exhibit "A"). The other detailed outline, embracing the entire history of National Socialism and dealing with (i) criminal plans and acts prior to 1933, (ii) establishment and fortification of power 1933-1939, (iii) launching of wars of aggression, and (iv) devices used to undermine and crush resistance in other countries will be made available shortly. These outlines of the prosecution's case will be made available, with instructions, to overseas posts as soon as they have been approved. The work

behind them is so basic to a careful case that each will be submitted for careful consideration of the entire Staff, so that any changes desired may be made as soon as possible.

b) The trial briefs will include: (1) Domestic Crimes in establishment of power in Germany, including (a) elimination of political opposition, (b) elimination of trade union opposition, and (c) persecution of the churches;

(2) Criminal aggression and occupation policies, including (a) illegal annexation of territory, (b) Spoilation of property, (c) Maltreatment of civilians, especially civilian labor, (d) extermination of the Jews, and (e) elimination of specific social groups, e.g., Polish intelligensia;

(3) Criminal conduct in course of wars, including (a) shooting of paratroopers, (b) shooting of hostages, (c) maltreatment of prisoners of war, (d) wanton destruction of property, and perhaps (e) terror bombing;

(4) The Criminal plan to establish world domination.

One of the trial briefs (Persecution of the churches) is nearing completion, and work has been

commenced on almost all of the others. The trial briefs are planned to be (i) statements of the crimes involved, with citation of authority, (ii) a statement of the organizations and persons responsible for the crimes and the legal basis of such responsibility, and (iii) a factual analysis and reference or physical attachment of the evidence available (including a list of witnesses and their probable testimony), a statement of the further evidence required, the steps already taken to obtain such evidence and the steps to be taken. It is believed that sufficient evidence is now available to us in this country to write the original basic drafts of all these briefs, but that a substantial proportion of the best evidence of specific crimes will be found only overseas in time for the international trial. The "evidence" of which the court should take judicial notice (laws, decrees, regulations, historical facts, etc.) is completely on hand in original texts and will be included. A paper outlining the nature of such judicial notice, will be completed within the next week (it is already complete with respect to German law).

c) The tentative list of major German criminals has been completed and is attached hereto (Exhibit "B"). The list was compiled by a group of German scholars under proper supervision and is based upon the Planning Memorandum and the work already done in establishing those Nazi leaders properly responsible for criminal policies. It embraces all those higher-ups with which the international prosecution should be chiefly concerned, as the case now appears-- representing the principal policy-makers in all organizations responsible for criminal acts. Because of a request that degrees be indicated, the first 25 have been marked in red and the second 25 in blue. This list is presented to you for consideration and directions for appropriate use, with the understanding that it will be revised in more specific form as the case progresses.

Arrangements have been made with the War Crimes Office which will enable its representatives to cooperate in whatever use of this list is directed by the Chief of Counsel. In carrying out such directions, use will be made of the facilities of

OSS Biographical Records Division (a sample biographical report is annexed hereto as Exhibit "C"), OSS Pictorial Records (still pictures of the individuals concerned, many from Axis sources), the Interdepartmental Committee (indexed foreign newspapers and periodicals, including all German newspapers), and the Foreign Nationalities Branch (which normally reports to the Department of State on foreign political trends within the United States and is already engaged in a survey to determine the best witnesses to Axis crimes now within the United States). Several persons are already being interrogated.

d) The "test run" on the case against Goering is underway. No other such case is planned at this time, any such work being premature. The test case will attempt to give immediate focus to the basic projects and will be continually revised as such projects develop. The first draft should be available within several weeks.

4. The preparation of the prosecution has also embraced appropriate measures in the procurement of evidence. SI (Secret Intelligence) and X-2 (Counter-Espionage) have been informed in detail of the plan, and arrangements have been completed

both in this country and overseas to secure such required specific data as should be admissible evidence in proof of the charges. The original request to these branches and certain others which may assist (See Exhibits "L" and "M") have been supplemented by (a) conferences with all OS intelligence sources concerning the detailed plan of prosecution, and methods of proving it, and (b) cables to OS outposts in London, Paris, Italy, Germany and other regions requesting immediate reports on such material. It is expected, because of cable indication of the Chief of Counsel's plans, that following the basic prosecution planning and assembly of "trial briefs" in the United States within the next six weeks, the majority of the staff will leave for London and Paris (for the procuring of additional evidence and final international integration of the case). Those overseas accordingly have been instructed to send only reports of evidence (when required by its bulk) and otherwise to air-pouch microfilm reproductions.

The following specific measures may be cited as illustrative of the above program:

- a) A qualified attorney, experienced in intelligence work, is now in London with the Planning Memorandum and instructions, subject to the direction of the Chief of Counsel, to correlate and report as soon as possible on

(i) all information possessed by the United Nations War Crimes Commission, (ii) all information possessed by CIOS, SHAEF, etc., (iii) all information possessed by OSS, London and Paris, (iv) all information procurable from the British. In this tremendous task, still in its formative stages, he is being assisted in London by a qualified staff, to be gradually supplemented by Washington personnel, and will work under the direct supervision of General Donovan. It is expected that Justice Jackson will have detailed information on the progress of this work.

b) Intelligence personnel in Switzerland have already reported on valuable evidence and witnesses now available, including a former Gestapo chief, with intimate knowledge of its policies, who has been secretly serving the United States for several years and is now being brought to Paris for questioning by Colonel Amen.

c) Two important murder cases of OSS paratroop officers in uniform, one of 15 men in Italy, the other of 7 in Czechoslovakia, are being thoroughly investigated. Prisoner interrogation already has resulted in our having in custody several of those implicated

in the Italian incident, all pleading "superior orders" and testifying that the murders were committed pursuant to the 1942 Hitler order on the shooting of paratroopers (a photostatic copy of which is possessed here). It is expected that sufficient material for trial of those involved (including Gauleiter Wolff) should be available soon. Daily detailed reports are being received on the Czechoslovakia incident.

d) An OSS naval officer imprisoned by the Gestapo for some months is available to testify to conditions within the Gestapo camp and we possess six volumes of records of Gestapo executions in the camp and other authentic data. [Certain of the testimony of this officer is now available in a film report, which will be shown soon to the Staff.]

e) Arrangements have been made in Paris to place all our facilities at the disposition of Colonel Amen.

f) It is expected that with the assistance of Colonel Taylor, the War Crimes Office will be able to supply (i) copies of many captured German Army orders involved in such chains of proof and (ii) other pertinent documents possessed by MID, including interrogation reports beyond those possessed by OSS. In this respect consideration must immediately be given to a necessary

modification of the "Third Agency Rule" which is preventing the free interchange of documents between OSS and the War Crimes Office.

g) Arrangements have been completed by X-2 with Colonel Purvis whereby specific information (e. g., the name of an area commander and his staff at a given time in a certain area) will be made available upon request.

5. Field Photographic Branch has organized a program, in cooperation with the Army Signal Corps, Navy Photo Science Laboratory, OWI, etc., under which it will cooperate with the War Crimes Office in correlating and processing all motion picture evidence of war crimes. The basic Field Photo program is designed to prove all five charges in the indictment by photographic means. The following steps have been taken:

a) Qualified personnel are already screening all German newsreels, captured enemy film and other photographic evidence which could be introduced as proof of the charges. This work, undertaken in close cooperation with the R & A Branch, is also being carried forward by Field Photographic units in London, Paris and Germany. Negotiations with the Russians for photographic evidence have already been commenced.

Expert witnesses to lay proper foundation for the evidence are available.

b) Planning of a dignified and inconspicuous (but complete) recording of the trial has been made, the plan essentially that used at the San Francisco Conference.

c) A script for a documentary film is being prepared, for final integration after the trial in a permanent documentary film of the entire international prosecution.

d) A sound crew in Paris has been made available to Colonel Amen for any required photographic recording of interrogations, per the plan previously approved by Justice Jackson.

e) A short for public release within the next 90 days is awaiting approval. A tentative outline of the film is attached (Exhibit "F") for immediate consideration and appropriate directions. All stock documentary film required for this picture has already been selected, is now being assembled in Washington and will be processed as soon as the outline is approved. The film will be released through OWI in the U. S. and to the armed services.

6. A staff of attorneys, embracing top-flight lawyers with District Attorney and anti-trust or similar experience, plus German language qualifications, is partially assembled and should be completed shortly. This group will review each section of the case as it leaves R & A in draft form, with you, Mr. Shea and other staff members invited to attend its meetings. Each section of the case will then be assigned to one man who, under your general supervision, will be charged with the final preparation of that section here and eventually overseas. He will work with the R & A man who originally prepared the case, the Field Photographic and Visual Presentation staffs.

7. Various legal studies on German, civil and international law are underway, to be made the subject of a separate report. These include such basic studies as (a) The Fuehrer Principle as a basis of criminal responsibility, (b) Proposals to the Court re judicial notice, (c) Proposed Rules of Procedure, and (d) Proposed Judgments.

8. A proposed OWI-033 propaganda program will also be made the subject of a separate report.

9. Presentation Branch is working on detailed plans for the physical arrangements at the trial, the work being similar to that done for the State Department at the San Francisco conference. It also is running programs parallel to all R & A

projects, using charts, models, photographs and other visual aids.

10. In addition to the foregoing, the following points should be emphasized:

a) Colonel Taylor, Dr. Langer and certain members of the Staff should meet as soon as possible to assure more prompt and effective screening of captured enemy documents; OSS representation on CIOB probably should be immediately strengthened;

b) It must be recognized that until the War Crimes Office is properly staffed in numbers and quality that this agency is in no position to determine the extent to which it may rely upon the only agency in the Government specifically charged with the collection of evidence of war crimes; OSS has collected and forwarded certain evidence of such crimes but its collection has never been a specific task given to this agency by the Joint Chiefs of Staff.

James B. Donovan