

55.

OFFICE OF U. S. CHIEF OF COUNSEL
APO 403, U. S. ARMY

BOARD OF REVIEW

MEMORANDUM NO. 1

26 October 1945.

GENERAL ACTION TAKEN

1. DIVISION OF RESPONSIBILITY FOR PROVING THE ALLEGATIONS OF THE INDICTMENT -- In clarification of Exhibit "A" to General Memorandum No. 5 of the Chief of Counsel, 22 October 1945, the allegations of the indictment have been assigned for handling in the following manner:

<u>INDICTMENT</u>	<u>SECTION RESPONSIBLE</u>
<u>Count One</u>	
III	No assignment
IV (A)	Section 1
IV (B)	Section 1 to cover objectives derived from the Party Program, speeches, writings, etc., especially in early period; Section 3 to cover pre-planning for particular acts of territorial aggrandizement.
IV (C)	Section 1
IV (D) 1, 2, 3(a)	Section 1
IV (D) 3(b)	Section 1, except that all necessary proof as to concentration camps from 1933 to 1945 will be furnished by Section 4. There will be liaison between Sections 1 and 4 on so much of the proof regarding concentration camps as bears upon the "common plan".
IV (D) 3(c)	Section 1
IV (D) 3(d)	Section 4. The proof is to cover the period from 1933 to 1945. There will be liaison between Sections 1 and 4 on so much of this proof as bears on the "common plan".

INDICTMENTSECTION RESPONSIBLE

IV (D) 3(e)	Section 2
IV (D) 3(f)	Section 6
IV (E) 1	See disposition of IV (D) 3(c) above.
IV (E) 2, 3, 4, 5	Section 2.
IV (F) 1	See disposition of IV (B) above.
IV (F) 2, 3, 4, 5, 6 (title and first paragraph only), 7	Section 3
IV (G) and second and third paragraphs of IV (F) 6. These are general statements embracing the subjects dealt with in Counts Three and Four. Accordingly assignments were made on the basis of allegations of Counts Three and Four as follows:	
VIII (A)	Section 4
VIII (B)	Section 2 to cover the entire subject matter of slave labor including deportations for that purpose; Section 4 to cover deportations for other purposes.
VIII (C)	Section 4
VIII (D)	Section 4
VIII (E)	Section 2, except the looting and destruction of works of art and the like (e.g. Einsatzstab Rosenberg) which are assigned to Section 4.
VIII (F)	Section 4
VIII (G)	Section 4
VIII (H)	Section 2

INDICTMENTSECTION RESPONSIBLE

VIII (I)

Not assigned

VIII (J)

Not assigned

X (A)

See disposition of IV (D) 3(b)
and VIII above

X (B)

See disposition of IV (D) 3(d)
and VIII above.IV (H), first sentence, and
Appendix "A"

Göring

Section 5

Ribbentrop

Section 3

Hess

Section 5

Kaltenbrunner

Section 6

Rosenberg

Section 5

Frank

Section 5

Bormann

Section 5 (last priority)

Frick

Section 5

Ley

Section 5

Sauckel

Section 2

Speer

Section 2

Funk

Section 2

Schacht

Section 2

Papen

Section 5

Krupp

Section 2

Neurath

Section 5

Schirach

Section 5

Seyss-Inquart

Section 5

Streicher

Section 5 (subject to discussion
with Sections 1 and 4)

Keitel

Section 5

Jodl

Section 5

Raeder

Section 5

Dönitz

Section 5

Fritzsche

Section 1

(NOTE: (i) As to defendants assigned to Sections other than Section 5, Section 5 will have no responsibility except to see that the product is suitable in form, and except as stated in (iii) below. (ii) As to each defendant assigned to Section 5, it is understood that Section 5 will coordinate--but not duplicate--any pertinent materials gathered by other Sections and will then go on to establish through such research, interrogation, etc., as may be necessary, the balance of the case against that defendant. (iii) Section 5 will compile proof in its best manageable form of all significant official positions held by all defendants.)

INDICTMENTSECTION RESPONSIBLE

IV (H), second sentence, and
Appendix "B"

Reichsregierung

Section 6

Korps der Politischen
Leiter (including tech-
nical advice on the last
paragraph of page 35 of
the indictment)

Section 6

SS (including SD)

Section 6

Gestapo

Section 6

SA

Section 6

General Staff and High
Command

(Special arrangement with
Col. Telford Taylor)

(NOTE:--It is recognized that as to certain of the organizations above listed, some of the proof of acts committed--as distinguished from the purpose, constituency, history, training, etc. of the organizations--must be supplied to Section 6 by other Sections. This is to be worked out among the several Section Chiefs.)

2. TRIAL BRIEFS.--The Section Chiefs are directed to submit to the Board on or before 10 November 1945 trial briefs covering the portions of the indictment assigned to them respectively. The Standard Form of Trial Brief heretofore circulated is recommended for use, but it is recognized that it will not always be possible or advisable to follow this form.

3. LIAISON WITH OTHER NATIONS.--Consultants to the Board serving as liaison with the other Nations are requested to obtain clear understandings on the scope of the proof to be offered by those Nations. Such understandings will assist the American Staff in determining, for example, how far it is to go under Count One, IV (G), of the indictment. In particular:

(a) Liaison with U. K. is requested to obtain clarification of the relationship in the actual trial of the case between Counts One and Two.

(b) Liaison with U.S.S.R. is requested to obtain clarification of the extent, if any, to which the U. S. will be expected to prove Count One, IV (F) 6, last two paragraphs.

(c) Liaison with France, U. K., and U.S.S.R. are requested to discuss the question of authentication of documents captured by those Nations which are to be offered in evidence. (See "4" below)

4. AUTHENTICATION OF DOCUMENTARY EVIDENCE.—(a) Captured Documents.

As to each document captured by the U. S. Forces and offered in evidence, the minimum authentication will be the certificate recently approved for use by Mr. Justice Jackson, which states generally that the document was captured by U. S. Forces, received by OCC in due course, etc. In order to bolster this form of authentication, Section 7, in collaboration with Major Coogan, is requested to prepare a general affidavit or certificate describing the manner in which documents were captured by the U. S. Forces, the way in which they flowed to OCC, and the like.

Where a document was captured by U. S. and other Forces jointly, it is assumed that the minimum authentication certificate will be appropriate modified to reflect that fact.

There is no requirement that every captured document be identified through the interrogation of a defendant or witness. It is recognized that in some cases it may be unwise to submit documents for such identification.

It is felt that in the usual case, the minimum authentication should suffice. However, in some instances, where a document establishes a point of prime importance and the Section Chief feels that more than the minimum authentication would be desirable, he may develop (with the advice of Major Coogan) a more complete authentication which may be in the form of a more detailed authentication certificate, one or more special affidavits, or testimony of witnesses.

The foregoing is not intended to prevent the search for originals of documents in place of duplicates, etc., where this is thought to be advisable, by the Section Chief.

(b) German Materials. Books, magazines, newspapers, etc., published in Germany need not be authenticated. This of course includes statutes, decrees and orders published in official German collections.

(c) Documents and Reports of United Nations. Official documents and reports of any of the United Nations, including the reports of committees appointed by any of such Nations for the investigation of war crimes, need not be authenticated. However, where time permits, authentication should be secured by certificate of an appropriate official.

(d) Judicial Records and Findings. Records and findings of judicial proceedings, including proceedings of courts martial, will be authenticated by certificate of the Court Recorder or the Trial Judge Advocate.

(e) Affidavits. Affidavits need not be further authenticated.

(f) Unsworn statements. Unsworn statements taken in the course of official investigations will be authenticated by certificate of an appropriate official of the agency.

(g) Sworn or Unsworn Interrogations. Such testimony will be authenticated by an appropriate official of the agency which conducted the interrogation.

It is recognized that the foregoing does not answer all the questions which may arise. Questions considered to involve general policy should be submitted for decision by the Board.

5. COORDINATION OF INTERROGATION WORK WITH THE WORK OF THE SECTION CHIEFS.--It is considered vital that the work of the Interrogation Division be integrated more closely with the work of the Section Chiefs who are responsible for preparing the various portions of the case for trial. Accordingly:

(a) Colonel Amen has undertaken to supply necessary personnel to complete analyses (of the type heretofore prepared by Lt. Atherton) of interrogations conducted through 25 October 1945. These analysis sheets will be mimeographed and promptly distributed to Section Chiefs and others in adequate quantities.

Commencing 26 October 1945, each interrogator, after completing his work for the day, will prepare a digest of his interrogations during that day. These digests will be mimeographed and promptly distributed to Section Chiefs and others in adequate quantities.

(b) A list of defendants and witnesses now at Nurnberg will be made available to the Section Chiefs and supplemental lists of arrivals and departures from Nurnberg will also be made available to Section Chiefs at appropriate intervals. These lists will show the subject matter as to which it is believed the persons can give testimony or information.

(c) Within 48 hours after receipt by the Section Chiefs of the list of persons now in Nurnberg, the Section Chiefs will deliver to Colonel Amen, with copies to the Board, memoranda requesting any further desired interrogation of any of the persons listed, with an indication of the subject matter to be covered. The memoranda may contain other suggestions or comments. Persons whose further detention at Nurnberg is not required will be sent away, and further interrogations of those remaining here will be conducted in close collaboration with the Section Chiefs or the members of their staffs.

(d) No further persons will be brought to Nurnberg for interrogation without the approval of the Board and the further approval of the Executive Officer.

Section Chiefs will present to the Board requests for movement of persons to Nurnberg for interrogation which will, in each case, indicate the subject matter sought to be proved through these persons. The Board will act promptly upon such requests, with the advice of Colonel Amen where necessary, and in recognition of the fact that Section Chiefs have the initial responsibility for determining how to prove their portions of the case.

(e) Hereafter, no interrogation requested by a Section Chief will be conducted by the Interrogation Division without full collaboration with the

Section Chief or members of his staff. Furthermore, there will be available in Colonel Amen's office each afternoon information on the persons to be interrogated the following day, the subject matter to be covered, and the name of the interrogator, so that the Section Chiefs may be informed of all interrogations to be conducted, whether or not at their request, and have an opportunity to attend the interrogations and, so far as time permits, to collaborate with the interrogator.

(f) Except with regard to field trips conducted by Section 2 through 10 November 1945, no field trips to obtain testimony, affidavits or information from witnesses will be conducted without the approval of the Board and the Executive Officer. Requests for permission to conduct field trips will be submitted to the Board which will act upon them promptly, with the advice of Colonel Amen where necessary, and in recognition of the fact that Section Chiefs have initial responsibility for determining how to prove their portions of the case. The question whether a member of the Interrogation Division will accompany Section members on approved field trips will be left to decision by the Section Chief and Colonel Amen.

6. QUESTIONS SUBMITTED TO CHIEF PROSECUTORS.--The Board is presenting to the Chief Prosecutors for joint decision the question of the precise use to be made of interrogations of defendants and witnesses which were conducted prior to the filing of the indictment; the question of the form and use to be made of interrogations conducted after the filing of the indictment; and the question of the precise meaning of "preliminary examination" as used in the Charter.

7. ASSIGNMENT OF LAWYERS TO THE SECTIONS.--The Executive Officer, upon recommendation of the Board, has made assignments to the Sections which have been notified to the Section Chiefs involved. Certain questions are still outstanding, but it is hoped that they will be speedily resolved. It is requested that any conflicts or difficulties which may arise be submitted to the Board.

8. SCREENING AND ANALYSIS GROUP OF DOCUMENTATION DIVISION.--This group has virtually completed its screening and analyzing of documents. For the time being, it will remain available as a unit to undertake projects upon request of the Section Chiefs. It is believed that Section 5 can make particularly good use of this group.

9. MEETINGS OF THE BOARD.--The Board meets every working day at 0930 hours and remains subject to call by the Chairman at all times. Questions or requests will be received at any time and will be disposed of as promptly as circumstances permit.

Robert G. Storey
ROBERT G. STOREY,
Chairman,
Board of Review.

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Mr. Justice Jackson - 3
Maj. Gen. Donovan - 3
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Chief, Section 6 - 12
Chief, Section 7 - 3
Mr. Sidney S. Alderman - 3
Mr. Frank M. Shea - 3
Col. Telford Taylor - 3
Comdr. James B. Donovan - 3
Colonel Gill - 3
Colonel Amen - 3
Major Coogan - 3
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