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Samuel Rosenman Papers
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War Crimes

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NLT JUDGE SAMUEL ROSENMAN CX 592

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TYRANNY OR INJUSTICE STOP UNDER VIGOROUS ADMINISTRATION NO GUILTY PERSON CAN ESCAPE STOP TO RESORT TO ADDITIONAL RETROACTIVE CRIMINAL LEGISLATION MIGHT NOW APPEASE SOME WHO HAVE SUFFERED BUT WOULD ULTIMATELY BE CONDEMNED BY MORE SOBER JUDGMENT AND SUCCEEDING GENERATIONS AS A VIOLATION OF THE PRINCIPLES FOR

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WHICH WE FOUGHT STOP THE IDEALS FOR WHICH OUR MEN HAVE DIED SHOULD NOT BE TARNISHED BY EVEN THE SHADOW OF A SUSPICION THAT WE HAVE STOOPED TO NAZI METHODS OR HAVE TORTURED LEGAL PRINCIPLE IN ORDER TO WREAK FORMALIZED VENGEANCE RATHER THAN TO ADMINISTER DISPASSIONATE

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MATTER OF POLITICAL DIFFERENCE IN THE PRESENT STATUS OF THE ORGANIZATION OF THE PEACE STOP PLEASE REMEMBER ME TO WINANT AND ALSO TO CHURCHILL AND EDEN WARM REGARDS=

JOSEPH E DAVIES.

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War Crimes

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PARAPHRASE OF SECRET OUTGOING TELEGRAM

RED: 5317

SECSTATE

WASHINGTON

3423, 4 April

For GREEN HACKWORTH from ROSENMAN

Revealed in conversations today with Sir William Malkin that the discussions on war crimes contemplated by him were somewhat limited in scope and do not cover the whole field of war crimes and atrocities or the question of dealing with major war criminals. Any conversation on the question of major war criminals I am advised must be with the Lord Chancellor and I propose to present the problem to him Thursday 4 April suggesting a prompt determination of a comprehensive method of dealing with all war crimes and atrocities along lines recommended to the President on 22 Jan. I assume and understand that I am authorized to discuss these matters fully at the highest necessary highest level and to attempt to formulate a draft agreement for consideration by the four principal governments concerned. Request that I be advised by return cable whether my understanding is correct. I am attempting to ascertain ways and means of bringing the French and Russians into the discussions at the earliest moment possible.

WINANT

Judge Rosenman

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By Deputy Archivist of the U.S.
By W. J. Stewart Date JUL 25 1974

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[redacted]

COPY FOR JUDGE ROSENMAN

XXXXXXXXXXXXXXXXXXXX

XXXXXX

XXXXXXXXXXXXXXXXXXXXXXXX Room No. 126

[redacted]

1 Grosvenor Square,
London, W. 1.

12 April 1945

Dear Sir Donald:

Colonel Cutter and I acknowledge with thanks the copies of your minute of the meeting in your offices, held on 10 April.

I enclose Colonel Cutter's memorandum (Copy No. 1) to me of comments on this minute. With these comments I am in agreement. I submit them as being possibly of assistance in clarifying the views we expressed at the meeting.

Sincerely yours,

J. M. WEIR
Brigadier General, U.S.A.
Assistant Judge Advocate General

Enclosure: 1 as stated above.

The Right Honorable Sir Donald Somervell, P.C., K.C.,
The Attorney General,
The Royal Courts of Justice,
The Strand, W.C. 2.

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E. O. 11652, Sec. 3(E) and 5(D) or (E)
OSD letter, May, 3, 1972
By SLR Date JUL 25 1974

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[redacted] Judge Rosenman

[redacted]

Copy No. 2

11 April 1945

MEMORANDUM FOR GENERAL SEIR

I have the following comments upon the Attorney General's Minute of the discussion of yesterday (10 April).

Paragraph 1 - The U.S. and U.K. delegates, of course, both made it plain at the meeting that they were not then in a position themselves to fix policy with respect of the procedures for dealing with (1) Hitler and his colleagues and (2) the Gestapo and other organizations but must wait for comments from Washington and the War Cabinet respectively. Even if the proposals now advanced are approved in substance some amplification of them in detail, of course, will be necessary.

Paragraph 2 - The most difficult problem before us is the settlement of the content of the document of arraignment and the extent to which it is to be supported by exhibits, such as (1) summaries of the Axis offences of different types; (2) written proof of the responsibility of those at the top of the Nazi hierarchy for the criminal acts of those below or at the bottom; (3) written evidence showing knowledge of the criminal acts (or notice or constructive knowledge) on the part of the Nazi leaders etc. A companion problem is that of the scope of permissible defence proof and argument. I think these two matters require further discussion and upon the adjustment of these two points much may depend. It seems to me the defence must be afforded a fair hearing, but undue length of trial and irrelevances must be avoided.

Paragraph 3 - I merely wish to note that, because of U.S.S.R. non-membership in the War Crimes Commission, use of its facilities should be made in a manner which does not run the risk of embarrassing collaboration with the U.S.S.R. on this subject.

Paragraph 4 - I had feared that, at the beginning of our talk, I had not made clear to the Attorney General my ideas on the so-called "executive" organization. (See par. 7 of the memorandum sent by Judge Rosenman to the Lord Chancellor on 6 April 1945). I think the Attorney General's Minute indicates that any misunderstanding has been clarified.

My suggestion was that very promptly a four-party working executive body should be set up to take charge of the cases against (a) the Nazi leaders and (b) the principal Nazi organizations. Because the operations of this body may be largely in occupied Germany, (and because of the psychological advantage of dealing with Germans through military people) I had thought of it as a military group, its members receiving, of course, political guidance from their Governments. The important thing, of course, is to get responsible people representing each of the four governments together in one place promptly, where they can have day to day contact and plan in detail the proceedings against the Nazi top leaders and the Nazi organizations. (In other fields, as the Attorney General points out, the executive group's functions would be advisory at most.) The more integrated this organization can be, the better. It should, at the least, afford occasion for frequent

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[redacted]

four-party conferences among the principal responsible lawyers representing the four governments.

Even though he could not give full time to it, there would be advantages to the United Kingdom, and to all of us, in having Sir Thomas Barnes, or someone of his standing, represent the U.K. This is, of course, entirely a matter for U.K. decision. The U.S. representative, I should suppose, (because of distance) would naturally and almost necessarily be working full time on this single matter. As the Attorney General says, this matter is one for each of the four nations to decide for itself.

Paragraph 5. - No comments.

Paragraph 6. - I agree that the precise form which the Stage 2 proceedings will take and the manner in which they will be undertaken is a matter for final determination after the Stage 1 "common enterprise" trial of the organizations is complete. Our proposal (set out in the memorandum submitted to the Lord Chancellor by Judge Rosenman), however, contemplates that Stage 2 proceedings against individual members will be undertaken on a wide scale to the extent that the Stage 1 result warrants them. We, of course, hope that the whole plan proposed by Judge Rosenman will receive present approval - We must, however, consider postponing too detailed formulation or public announcement of the Stage 2 portion of the plan until Stage 1 is completed or, at least, far enough advanced to permit of such action.

H. A. C.

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6 April 1945

MEMORANDUM

Subject: War Crimes and Atrocities - Means for their Prosecution.

In response to the request of the Lord Chancellor at the meeting in his rooms on 5 April 1945, there is submitted the following outline of the proposals then advanced by the United States representative and his advisers for discussion. It will be recalled that the United States representative expressed the view that these and similar proposals of the United Kingdom representatives should be the subject of discussion at a very early date with representatives of the Union of Socialist Soviet Republics and of the Provisional Government of France. The United States representative understands that it is the intention of the Lord Chancellor to obtain informally the views of the appropriate representatives of his Government with respect to the proposals discussed at the meeting on 5 April and the best means of bringing Soviet and French representatives into the discussion. In the meantime an exchange of informal and tentative memoranda, of the type here presented, will aid in reducing to a minimum any differences of viewpoint between the United States representatives and the United Kingdom representatives.

I. Areas of Agreement.

There is substantial agreement on the following points:-

1. There is no desire on the part of either delegation to propose the establishment of an international criminal court of the type suggested by the United Nations War Crimes Commission (U.N.W.C.C.), but in rejecting that proposal an appropriate substitute should be suggested.

2. In accordance with the principles of the Moscow Declaration, those charged with specific war crimes should be returned to the scenes of their crimes for trial.

3. War crimes committed in Germany or elsewhere against U.S. and U.K. nationals respectively will be tried on the

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Continent by U.S. or U.K. military tribunals, as the case may be. Joint Allied military tribunals may be employed to try certain cases and to try any persons charged with specific war crimes in the smaller occupied countries, where obstacles to the trials for such crimes exist under the laws of such smaller countries or for other reasons. Such military tribunals of a single nation can be created by Executive Order (U.S.) or by Royal Warrent (U.K.) and, in the case of Joint Allied tribunals can be established by executive or military agreement not rising to the dignity of a treaty. It may be provided without any national legislation, that such military tribunals

a. may receive any evidence which the tribunal considers to have probative value; and

b. may operate expeditiously and free from all technicality or obstructive delay, by "streamlined" procedures, appropriate to the practical necessities of the particular cases.

II. Areas in which Discussion is Still Proceeding.

A. Discussion is still proceeding on the following principal points:-

1. the method of trial of the principal Nazi leaders;

2. the method of trial of the principal Nazi organs of criminal activity, such as the S.S. and the Gestapo, and of the members of those organizations who have participated in planning or carrying out war crimes and atrocities but the extent of whose participation in any specific offences is difficult to prove;

3. the proper means of punishing enemy nationals for

a. offences against other enemy nationals

b. offences committed prior to the formal beginning of the war; and

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4. the administrative and judicial procedures and planning with respect to the matters above listed.

It is understood that the U.K. representatives will present to the U.S. representative an informal memorandum of their views on the trial of the principal war criminals. It is understood that these views may contemplate the separate trial of the five or six principal Nazi leaders on formal charges dealing with the totality of their offences against civilization. The plan, outlined below by the U.S. representative, is believed to be consistent in many respects with the U.K. proposals, as described by the Lord Chancellor on 5 April, and, there would seem to be no objection to a separate trial of the five or six principal leaders, if upon investigation that seems desirable.-

B. The proposals of the U.S. representative, now advanced for discussion, upon the four matters listed above may be summarized as follows:-

1. An executive or military agreement should be entered into by the United States, the United Kingdom, the Union of Socialist Soviet Republics and the Provisional Government of France which should deal comprehensively with the matter of war crimes and atrocities. The other United Nations should be invited to adhere to the agreement after it is made. There are, however, substantial arguments against including such other nations in the negotiation of the agreement:-

   a. The agreement will be largely a matter for execution by the four nations engaged in the occupation of Germany and

   b. there is necessity for great speed in reaching agreement among the four occupant nations.

2. Recitals - The agreement might appropriately recite

   a. the earlier action by the United Nations in the

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Moscow Declaration and elsewhere on the subject of war crimes and atrocities,

b. that the criminality of the German leaders and their associates does not consist solely of individual outrages, but represents the result of a systematic and planned reign of terror within Germany and within the areas occupied by German military forces, in connection with which the crimes and atrocities referred to were committed,

c. that these crimes and atrocities were perpetrated pursuant to a premeditated criminal plan,

d. that for the carrying out of the acts of oppression and terrorism which their program involved, the Nazi leaders and their associates created and utilized a numerous organization, chief among which are the S.S., and the Gestapo, and

e. that there is necessity for establishing practical measures for bringing these criminals, their principal organizations, and their active leaders and members to justice.

3. Nature of Charges to be made - The German leaders and their associates, and the organizations employed by them, such as those referred to above, should be charged with the commission of their atrocious crimes, and also with joint participation in a broad criminal enterprise which included and intended these crimes, or was reasonably calculated or likely to bring them about. [This need not preclude the separate trial of particular Nazi leaders if, for any reason that is deemed desirable.] The allegation of the criminal enterprise should be so couched as to permit full proof of the entire Nazi plan from its inception and the means used in its furtherance and execution, including the pre-war atrocities

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and those committed against their own nationals, neutrals, and stateless persons, as well as the waging of an illegal war of aggression with ruthless disregard for international law and the rules of war. [As suggested by the Attorney General (Sir Donald Somervell) at the meeting on 5 April, it might be appropriate to place the principal emphasis and "center of gravity" of the charge upon the war crimes in occupied territories naturally growing out of the common enterprise] There should be invoked the rule of liability, common to all penal systems and included in the general doctrine of the laws of war, that those who participate in the formulation and execution of a criminal plan involving multiple crimes are jointly liable for each of the offences committed and jointly responsible for the acts of each other. In support of this charge there should be admitted in evidence the acts of any of the conspirators done in furtherance of the conspiracy, whether or not these acts were in themselves criminal and subject to separate prosecution as such.

4. Trial of the Charges - the trial of the charges described in the preceding paragraph should be carried out in two stages:-

a. Stage 1 - There should be brought before an international military tribunal to be created(by executive or military agreement - see infra) the highest ranking German leaders*to a number fairly representative of the groups and organizations charged with complicity in the basic criminal plan. Adjudication should be sought not only of the guilt of those individuals physically before the tribunal, but also of the complicity of the members of the organizations included within the charge. The tribunal should make findings adjudicating the facts established, including the nature and purposes of the criminal plan, the identity of the groups

*This need not preclude separate trial of particular German leaders if that is deemed desirable.

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and organizations guilty of complicity in it, and the acts committed in its execution. The tribunal should sentence those individual defendants physically before it who are convicted.

The above, which might take place in one or more trials, should complete the mission of this international tribunal.

b. Stage 2 - Thereafter, other individuals charged with specific atrocities and members of the organizations who are charged with complicity through such membership in the basic criminal plan but against whom there is not sufficient proof of specific atrocities should, unless held for trial by one of the United Nations or sent back for trial under the provisions of the Moscow Declaration, be brought before occupation or other appropriate tribunals. The findings of the tribunal in the trial provided for in paragraph a above should be taken to constitute a general adjudication of the criminal character of the groups and organizations referred to, binding upon all the members thereof in their subsequent trials in occupation tribunals or in other tribunals established under this instrument. In these subsequent trials the only necessary proof of guilt of any particular defendant, as regards the charge of complicity, should be his membership in one of those organizations. Proof should also be taken of the nature and extent of the individual's participation.

c. The defendant in each case should, upon conviction, suffer death or such other punishment as the tribunal may direct, depending upon the gravity of the offence and the degree of culpability of the defendant.

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5. Tribunal - Subject to a full discussion of the relative advantages of different types of tribunal, it is presently suggested that the tribunal for the trial of the basic crime described above (Stage 1) should be a military tribunal of from five to seven members, four of which should be representatives, respectively, of the four occupant powers. Additional members of the court might be selected by the four members first chosen from among a panel of officers of the several United Nations nominated by such of the other United Nations as may adhere to the executive agreement.

6. Procedures - The agreement should include an undertaking to adopt and apply comprehensively in the trial of war criminals, to the greatest extent practicable, expeditious, fair, non-technical procedures which would (in a manner consistent with the purposes of the agreement):-

a. provide each accused with notice of the charges against him and an opportunity to be heard reasonably on such charges;

b. permit the court to admit any evidence which it considers would have probative value;

c. except as the court in its discretion shall deem appropriate in particular cases, exclude any defence based upon the fact that the accused acted under orders of a superior officer or pursuant to state or national policy or upon the fact that the accused is or was the head or purported head or other principal official of a state, and

d. confine trials strictly to an expeditious hearing of the issues raised by the charges.

7. Executive Prosecuting and Planning Organization

a. The United Nations will wish to present no charges which cannot be proved. They will wish to be certain that the theory of prosecution rests upon ascertainable facts. The actual trial of cases must be planned and

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conducted by skilled trial lawyers familiar with the techniques of the expeditious presentation of intricate causes. Accordingly, the agreement should provide for the immediate creation of a full time executive group consisting of one representative each of the British Commonwealth, the United States, the Soviet Union, and France. So far as the operations of this executive group are carried out within Germany or Austria, such operations might appropriately be subject to the administrative direction of the Control Council for Germany or for Austria, as the case may be. This group should be assisted by an adequate staff of attorneys and research personnel to compile and analyze data, prepare the charges in the principal case or cases to conform to the proof and arrange the evidence for presentation to the international military tribunal.

b. The presentation of the principal case or cases before the international tribunal should be made by persons designated by the British Commonwealth, the United States, the Soviet Union, and France, each of these countries being entitled to designate one person, who might be its member of the executive group referred to in the preceding paragraph.

c. The full time executive group might also be charged with:

(1) the preparation of plans for the prosecution of individuals to be charged with specific war crimes and atrocities and with complicity in the basic criminal plan through membership in one of the organizations hereinbefore mentioned, not only in the national courts of the United Nations but also before occupation or other appropriate tribunals.

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(2) the organization, through military or civil agencies of the several parties to the agreement, of prosecuting organizations to prepare and present charges and to conduct trials.

(3) the planning and making of arrangements for the detection, apprehension, extradition, transfer, trial and punishment of persons charged with war crimes and atrocities or with participation in the basic criminal plan.

(4) the planning and putting into effect of suitable, expeditious, non-technical procedures for the swift but fair trial and punishment of war criminals in a manner consistent with the provisions of the agreement and designed to bring to certain and prompt justice those guilty of war crimes and atrocities.

(5) the recommendation to the appropriate governmental authorities of agreements and measures supplemental to or in addition to the agreement, necessary or appropriate to accomplish its objectives, and

(6) the maintenance of liaison among and with the appropriate military and civil agencies, authorities and commissions of or representing any of the United Nations which are or may be charged with responsibility for any matters dealt with in the agreement.

8. Expenses - The agreement should make suitable provision for the payment of the expenses of the prosecutions and the executive group.

The foregoing rough summary is submitted as a possible basis of discussion.

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7 April 1945

MEMORANDUM FOR JUDGE ROSENMAN:

I hand you herewith the following papers:

(1) Copy No. 1 - Memo of Meeting 4 April 1945 (RAC notes)

(2) Copy No. 1 - My notes of Meeting with Lord Chancellor et al 5 April 1945.

(3) Original and copy No. 1 of letter from the Lord Chancellor to you dated 6 April 1945.

(4) Copy No. 5 and Copy No. 11 of Memorandum dated 6 April 1945 sent by you to the Lord Chancellor, with your letter of 6 April, a copy of which I also inclose.

(5) Copy of my letter dated 7 April 1945 to Major Davidson Sommers, Office of Assistant Secretary of War.

RAC

R. AMMI CUTTER
Colonel GSC

PS. I inclose copy No. 2 of my notes of the two meetings. You may wish to send these to Mr. Winant.

Inclosures: As stated above.

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Copy No. 1

Memorandum of Meeting, 4 April 1945,
at India Office (Offices of Sir William Malkin)

Present: Presiding - Sir William Malkin, Foreign Office

U. S. Side
Judge Samuel Rosenman
Brigadier General John M. Weir, JAGD
Colonel R. Ammi Cutter, GSC, Office of the Assistant Secretary of War

U. K. Side
Sir William Malkin
Sir Thomas Barnes, Treasury Solicitor and Head of the U. K. National Office of the United Nations War Crimes Commission (UNWCC)
Rt. Hon. Lord Justice William Finlay, U. K. Representative on the U.N.W.C.C.
Mr. G. P. Coldstream, Assistant Secretary to the Lord Chancellor, Lord Chancellor's Department, House of Lords
Mr. P. H. Dean
Mr. J. C. Wardrap, both of the Foreign Office

Sir William Malkin suggested the discussion of agenda for the meetings. Judge Rosenman said that the most immediate matter for decision was the question of Russian and French participation in the discussion. It was agreed that this was desirable at some stage and in some fashion to be determined.

The following points were mentioned by Sir William Malkin and others:

1. The U.N.W.C.C. proposal of a treaty court and of mixed military commissions. Judge Rosenman pointed out that, although the U. S. might wish to propose a mixed or military international tribunal to be created by executive agreement, it would not favor the U.N.W.C.C. treaty court.

2. Lord Finlay suggested that Sir William Barnes arrange for General Weir to see the actual mechanics of the War Crimes Commission and also

3. of the British National War Crimes Office (Whitehall 1124).

4. Sir William Malkin suggested that the procedure in acting upon the lists prepared by the U.N.W.C.C. be considered. He apparently had in mind only the steps to be taken in apprehending the persons on the lists. General Weir stated that he understood SHAEF and SACMED were on the lookout for the persons on the lists; that they had copies of the lists, and that no further orders from the CCS were necessary.

Lord Finlay then spoke of the methods of making up the lists and referred to the fact that the lists contained not only the names of persons accused of direct participation in particular offenses, but also of responsible heads of commands in which there was a record of "the iteration of certain crimes of the same type" even though no direct evidence connected the commander with the offences.

Judge Rosenman inquired how these crimes were to be tried and Lord Finlay replied that the U.N.W.C.C. was not responsible for deciding that.

[redacted]

E. O. 11652, Sec. 3(E) and 5(D) or (E)
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Sir William Malkin stated it was the U. K. plan to try offences before military courts created by Royal Warrant and with power to receive any evidence deemed to have probative value. The Judge Advocate General will prosecute the routine cases but the Attorney General has reserved the right to designate counsel in the more important cases.

(Mr. Dean left the meeting at this point.)

5. The question of liaison with the Russians was suggested for discussion by Sir William Barnes, who apparently considered that to be merely a matter of apprehension of persons wanted for trial (In the light of Russia's failure to join in the work of U.N.W.C.C., it was felt that this might present difficulties.).

Judge Rosenman at this point made it clear that he felt that

any liaison with the Russians (and French) should cover the whole field of war crimes and atrocities including

(1) crimes by and against those who never left Germany

(2) crimes before 1939

(3) atrocities by and against unidentified persons

(4) crimes committed by and criminal liability of superiors of the persons actually committing the offences

(5) the disposition of the major war criminals.

Offences against Germans by Germans, Sir William Malkin proposed to deal with in occupation courts. The major war criminals, he said, was a matter under consideration by the Foreign Secretaries.

Judge Rosenman then stated that this was a matter he proposed to deal with, "on whatever level might be necessary", and inquired whether he should raise it with the Prime Minister or Mr. Eden. It was then agreed to advance a meeting with the Lord Chancellor, contemplated for Monday, to Thursday at 2:30 P.M. at which time Judge Rosenman would raise this question and others on a broad range of matters. He made it clear that he understood that he was charged with negotiating and coming back with a draft executive agreement which would meet the legitimate and broad demands of the American people for punishment of war crimes and other atrocities. Such a draft agreement, he pointed out, would, of course, be subject to approval in Washington.

Sir William Malkin stated that plans for prosecutions in occupation courts were being drafted and would be presented to the E.A.C. in due course. It was suggested by Colonel Cutter that the U. S. views on this subject could be expedited as soon as the results of the present comprehensive discussions were known.

The meeting adjourned about 4 P.M.

R. A. CUTTER
Colonel, GSC

RAC:rc

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Distribution:

Judge Rosenman	-	Copy No. 1
Mr. Winant	-	Copy No. 2
Gen. Weir	-	Copy No. 3
Mr. McCloy ~~Mr. Hackworth~~	-	Copy No. 4
~~Gen. Henry, G-1~~	-	Copy No. 5
Col. Cutter	-	Copy No. 6

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SECSTATE

WASHINGTON

RED: 5559

7 April

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By Deputy Archivist of the U.S.
By W. J. Stewart Date JUL 25 1974

For HACKWORTH from ROSENMAN

Secretary of War Stimson and Attorney General Biddle should receive a repeat of this cable.

Discussions on war crimes have been proceeding with the Judge Advocate General (McGeagh), the Lord Chancellor and the Attorney General (Sir Donald Somervell). Tentatively we have reached general agreement that (1) the United Nations War Crimes Commission plan for a grandoise international criminal court created by treaty is not practical but some non-treaty tribunal must be provided and announced before any rejection of the War Crimes Commission proposal; (2) that individual offenders will so far as practicable be returned to the scenes of their crimes for trial in accordance with the Moscow Declaration; (3) that trials of other offenders will be before military courts, such courts being mixed military tribunals of t wo or more Allies where for some legal reason or political reason a mixed tribunal is preferred by the Ally having primary jurisdiction.

We are still proceeding with discussions on the problems of (a) the major war criminals and (b) the "common enterprise" approach outlined in memorandum of Secretaries Stettinius and Stimson and Attorney General, dated 22 January 45. The Lord Chancellor and the Attorney General seem inclined to accept the general principles of the "common enterprise" theory (much in accordance wit h the substance of the 22 January memorandum which of course has not been shown t o them). With respect to the six or seven principal Nazi leaders the Lord Chancellor represents that there is substantial British support for a wholly political disposition of these leaders, possibly without any hearing whatsoever. However, the Lord Chancellor suggest a middle or compromise ground of approach which is described by him in a letter of 6 April paraphrased in part at the end of this cable.

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We are sending a copy of this letter by courier to you and McCloy at SHAEF. McCloy will be here next week. It would be greatly appreciated if I might receive at the earliest possible moment any comments you, Attorney General Biddle or Secretary Stimson may have to make.

It is my personal feeling but I think much can be said for the Lord Chancellor's suggestion for a separate method of dealing with the top six or seven Nazi leaders. It will meet my approval if we can get British acceptance of the common enterprise proposal along lines of 22 January memorandum and subject to the following three comments (1) the court to try the six or seven leaders should be military; (2) the court should pass sentence and determine punishment, possibly subject to approval by the four major Governments through the Control Council for Germany; (3) the document of arraignment must have such adequate and reasonable documentation that to prove the accused guilty it will not be necessary to use oral testimony.

Complete secrecy is desired because of the risk to Allied Nationals in German hands. The matters outlined above are to be explored promptly with the War Cabinet. Also being explored is the question of best method and appropriate time of approaching Russians and French.

\+ + +

Parts of Lord Simon's letter follows in abbreviated paraphrase.

"This is an outline of a method of dealing with Hitler, Mussolini and other arch-criminals, designed to furnish an appropriate mode of dealin with them in a way which a voids summary execution without trial, on the one hand, and a long-drawn out State Trial with endless witnesses to be cross-examined on the other.

"A '<u>document of arraignment</u>' would be drawn up by the Allies in a somewhat general terms and an inter-allied judicial tribunal (possibly including some members not professional judges) would report upon the truth of this Arraignment after Hitler and Co had been given the opportunity to challenge before the tribunal the truth of its contents, the opportunity of being heard, and, of producing documents and witnesses. The function of the Court would be to report ot the Allies whether the Arraignment or any part of it had been disapproved. The Allies themselves (as the Moscow Declaration announced) would then determine the punishment.

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"I feel strongly that no judicial tribunal can have the responsibility of the sentence, but that is different from saying that a special tribunal could not say impartially and judicially whether the Arraignment is disapproved. The judges must, of course, act on their own judgement without Executive prompting if the sentence is left to them which is the tradition of Anglo-America. I would never consent to allow British judges to carry out the orders of any combination of Governments. The ultimate responsibility of deciding about Hitler and Co is placed by my plan upon the Allies themselves. This must be so for the ultimate fate of Hitler may for years influence world history. By calling on Hitler and Co to disapprove, if they can, a carefully drawn Arraignment, the substance of trial before sentence will be secured.

"Set forth in the document of Arraignment would be the real offense which the world feels these major criminals have committed, the Nazi policy of world conquest and the methods employed to achieve it. The document should also allege Mussolini's share. The treatment of the Jews of Germany and elsewhere would be one count. The Arraignment would be supported by the principal documents, e.g. 'Mein Kampf', or passages of Hitler's speeches, but the whole point would be that these men would be arraigned by broad descriptions of what they have done (as the whole world knows), and that they would b e left,t o meet this Arraignment, or any part of it, if they could.

"The following considerat ions, strongly support this plan in my view:-

a. Trial would not be for 'war crimes' in the technical sense and no discussion would take place as to whether what was charged was a crime by law, but the issue would be, can Hitler prove to an impartial court that the alleged facts are untrue.

b. Included in the plan would be Nazi infamies such as the attempted annihilation of the Jews. Hitler could not say that international law does not forbid maltreatment of his subjects by a leader.

c. If Hitler and Co deny the jurisdiction of the Court and refuse to take any part, they will have been charged with facts known to the world as true. The fact that an impartial tribunal was prepared to hear him would justify any sentence in history.

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[redacted]

No. copies 6
Copy No. 1

Conference in the Lord Chancellor's Room,
5 April 1945, at 2.30 PM.

Present:

US Side - Judge Samuel Rosenman
Brigadier General John M. Weir
Colonel R. A. Cutter

UK Side - The Lord Chancellor (Lord Simon)
The Attorney General (Sir Donald Somervell)
Sir William Barnes - Treasury Solicitor
The Judge Advocate General
Sir William Malkin - Foreign Office
Mr. P. H. Dean
Mr. G. P. Coldstream
Major General Gurney (Adj. Gen.)

The Lord Chancellor suggested the following matters for discussion:

1. A treaty court as suggested by the United Nations War Crimes Commission (UNWCC).

2. The possibility of military courts - mixed and one nation.

3. The punishment of top criminals.

4. The punishment of Germans for offences against German nationals.

5. The possibility of broad scale punishment of participants in the Nazi atrocities.

Judge Rosenman stated that he felt these were the subjects to be discussed but felt that very promptly the Russians and French should be brought into the discussions. He stated he proposed to raise that question later.

Judge Rosenman made it plan that the U.S. representatives had no interest in the UNWCC treaty court, but felt that a reasonable alternative should be suggested.

The possibility of military courts, either mixed or of a single nation, was suggested for the punishment

a. of those not punished or punishable by small nations at the scene of their crimes;

b. of those committing offences against military personnel of U.S. and U.K. respectively.

Judge Rosenman said that in connection with any punishment of top criminals he felt a military tribunal probably desirable.

It was tentatively agreed that unilateral military courts for the above purposes could be appointed by Royal Warrant (UK) or Executive Order (US) and could be granted rather liberal procedures. Mixed courts could be appointed by executive agreements, - to deal with residual cases and others.

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The question of Hitler et al, i.e. the principal war criminals, was discussed.

Lord Simon stated that there were various alternatives -

a. They could be shot upon identifcation without trial.

b. They could be tried.

c. They could be charged in a "document of arraignment" with a list of specific charges - plotting before the war, gross breaches of treaties (e.g. Poland, Czechoslovakia), maltreatment of minorities in Germany, the offences during the war, etc. They could be afforded an opportunity to answer these charges, to deny their truth, to speak in their defence. The body appointed to hear the case, under this proposal, would not determine whether these matters were crimes, but would merely ascertain the truth of the facts charged and report upon them. Punishment would then be imposed by the Governments.

The Lord Chancellor referred to this third possibility as a "middle ground", avoiding imposing on any court the duty of assessing the punishment, determining the applicable law, or of acting under executive instructions.

In answer to an inquiry from General Weir, the Lord Chancellor stated that he contemplated that only a few, perhaps only six or seven, top criminals would be dealt with in this manner as people whose wickedness was thoroughly known to the world, so that world public opinion would support their immediate, summary punishment. The trials would be in a group, not individual trials. In substance the proposal would reverse the burden of proof.

The Attorney General stated that he felt personally that the top criminals should be dealt with in summary fashion but was prepared to go along with the method outlined of dealing with and punishing Hitler "for the totality of all Hitler has done".

Judge Rosenman stated that much that was proposed was consistent with U.S. thought, but with certain differences he would point out later. He agreed that this procedure would limit the length of trial, which seemed to him important. Colonel Cutter stated that he felt that the U.S. view contemplated that the matter should be approached on a judicial basis, as a trial, rather than as a purely political matter; that in essence the process should meet judicial standards (possibly incorporating some continental criminal procedures) even if the procedure was kept simple, expeditious and summary.

Judge Rosenman then traced the "common enterprise" theory, substantially as later developed in a memorandum from Judge Rosenman to the Lord Chancellor.

The Lord Chancellor very quickly recognized that this proposal provided a fair and practicable method of preventing a class of Nazi criminals (intermediate between the top people and those guilty of and identified with specific provable offences) from escaping all punishment. He pointed out that the theory was that the members of the SS and Gestapo "belonged to a very bad club" with very evil purposes and were jointly and severally responsible for the club's criminal acts.

The Attorney General stated that he felt the "center of gravity"

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[redacted]

of the charge under the "common enterprise" theory should be on the occupation war crimes, war crimes in the strict international sense, and that the earlier offences and the domestic persecutions should be brought in principally as evidence of the scope of the enterprise and of the overt acts done in its course.

Judge Rosenman then discussed the importance of bringing in the French and Russians - and this subject was explored at some length.

The Lord Chancellor laid stress on the danger of reprisals against Allied prisoners if secrecy was not observed.

It was agreed that informal outlines of views would be exchanged promptly. The Lord Chancellor stated that he would report the several views to the War Cabinet, obtain informal consent to further U. K. proceedings along the lines of these views (without seeking an immediate decision) and seek approval of suitable approaches (in a manner to be worked out between the Foreign Office and U. S. Ambassador or Judge Rosenman) to the Soviets and the French. Judge Rosenman and Colonel Cutter indicated their desire to avoid any finality of agreement or decision in advance of any discussion with the Soviets. It was agreed, however, that informal progress could be made in reconciling U. S. and U. K. views.

The meeting adjourned about 5:45 P.M.

6 April 1945 - 3 P. M. - The Lord Chancellor's Room

At the Lord Chancellor's request (communicated through Mr. Coldstream) General Weir and Colonel Cutter met (with Judge Rosenman's prior approval) with the Lord Chancellor, Sir William Malkin and Mr. Coldstream.

The Lord Chancellor dictated a first draft of his notes to the War Cabinet and received suggestions as to certain phases of it,

Colonel Cutter stated

a. that a definite statement of Judge Rosenman's suggestions would be forthcoming;

b. that he did not feel authorized to speak, except informally, for Judge Rosenman.

The Lord Chancellor said that a draft of any parts of his memorandum bearing upon Judge Rosenman's suggestions would be presented for scrutiny.

With respect to the Lord Chancellor's suggestions of 5 April, the point was made of the strong War Department opinion in favor of a trial as opposed to summary punishment of the principal criminals. Some progress was made in convincing the U.K. representatives of the importance of this point of a judicial trial and of the necessity of doing all possible to support the "arraignment" by a carefully documented case.

With respect to the "common enterprise" theory, a considerable discussion took place along lines to be covered fully in Judge

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[redacted]

Rosenman's memorandum to the Lord Chancellor.

In view of the importance of bringing the Lord Chancellor's suggestions, carefully phrased, to the attention of Washington, the Lord Chancellor agreed to direct a note very promptly to Judge Rosenman, giving his precise proposals.

General Weir and Colonel Cutter left about 5 p.m.

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Secret

HOUSE OF LORDS,
S.W.1

6th April 1945.

DECLASSIFIED
By Authority of British Gov't. telegram, 1-12-72
By SR Date JUL 25 1974

Dear Judge Rosenman,

I promised to send you in writing an outline of the method of dealing with Hitler, Mussolini and other arch-criminals which I described to you at our meeting on Thursday. The method is designed to furnish an appropriate mode of dealing with these master criminals in a way which avoids summary execution without trial, on the one hand, and a long-drawn out process with endless witnesses as to details who would have to be cross-examined with all the paraphernalia of an immense State trial, on the other.

My proposal is that the Allies should draw up what I would call a "document of arraignment" in ~~more~~ somewhat general terms and that an inter-allied judicial tribunal (which might, however, include some members who were not professional judges) should be appointed to report upon the truth of this Arraignment after ~~xx~~ Hitler & Co. had been brought before the tribunal and given the opportunity to challenge the truth of its contents, if they could. The function of the court would be, after giving Hitler and Co. the opportunity of being heard, and, if they liked, of producing documents and witnesses, to report to the Allies whether the Arraignment or any part of it had been disproved. It would then be for the Allies themselves (as indeed the Moscow Declaration announced) to determine what the punishment should be.

I feel most strongly that no tribunal of a judicial character can be left with the responsibility of deciding the sentence, but that is a very different thing from saying that a specially constituted tribunal could not pronounce impartially and judicially as to whether the Arraignment is disproved. If the actual choice of sentence is left to a body of judges they

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must, of course, act on their own judgment without any prompting from Executives. Our Anglo-American traditions make this the very corner-stone of criminal justice, and I would never consent to allow British judges to mount the Bench for the purpose of carrying out the orders of any Government or combination of Governments. My plan avoids this and puts the ultimate responsibility of deciding what is to be done with Hitler and Co. where it must rest, i.e. upon the Allies themselves, for the ultimate fate of Hitler may influence the history of the world for a hundred years. At the same time, I think that by calling on Hitler and Co. to challenge and disprove, if they can, a carefully drawn document of Arraignment, we would secure the substance of trial before sentence.

The document of Arraignment, as I conceive it, would set out the real offence which these major criminals are felt, throughout the free world, to have committed. The offence charged would be, in substance, the Nazi policy which has been pursued of world conquest and the methods employed to achieve it. Mussolini's active share to promote this policy would, of course, also be alleged in his case. One count in the Arraignment would be the abominable treatment of Jews in Germany and elsewhere. I would propose that the Arraignment should be supported by the principal documents, such as passages from "Mein Kampf", or Hitler's speeches, but the whole point of the proceedings would be that these wicked men would be arraigned by reference to broad descriptions of what they have done (as the whole world knows), and that they would be left to meet this Arraignment, or any part of it, if they could. The sort of document I have in mind (which would, of course, have to be most carefully settled between the principal Allies) would leave them no loophole.

I would beg to call attention to the following considerations, which appear to me strongly to support this plan.

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S.W.I

(a) Such a trial would not be a trialfor "war crimes" in the technical sense known to international law. There would be no discussion as to whether what the Arraignment charged was recognised as a crime by the law of nations or by any other law. The issue would simply be, can Hitler prove to an impartial tribunal that ~~he is not guilty of~~ the statements alleged are not true.

(b) The plan would have the enormous advantage of including within the scope of the charges Nazi ~~infamies~~ atrocities such as the treatment, torture, and attempted annihilation of the Jews. Hitler would not be able to say that it is no offence under international law for a ruler to maltreat his own subjects. The question would simply be whether in the light of the documents appended to the Arraignment he can satisfy the court that he did not deliberately adopt and promote these infamies.

(c) It may be that Hitler and Co., when presented with the charges, would deny the jurisdiction of the court and refuse to take any part in the proceedings. I see no reason why the Allies should feel in any difficulty in that event. He will have been charged on lines which are known to the whole world to be true, and he would have decided not to challenge the charges. The fact that an independent inter-allied tribunal was prepared to hear him, if he had anything to say, would justify to history his subsequent doom.

(d) On the other hand, he may challenge the Arraignment volubly and at length and repeat some of his almost interminable speeches. If the facts alleged are carefully chosen, this will not in the end affect the approval which the world would give to a judicial pronouncement. Anyhow, you cannot claim to deal with the man judicially

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if you do not offer to hear what he has to say, so far as it is relevant to the charges made.

(e) I venture to press for favourable consideration of the above scheme for another reason. History is easy to get distorted, and I think it would be of great advantage if by the co-operation of the Foreign Offices of the principal Allies a document of this sort was drawn up with considerable, but not excessive, documentation, putting on record for all time the grounds upon which we dealt with a man who has proved himself to be nothing but hostis humani generis.

I have been very much impressed by the news I have received, partly through Lord Halifax, of Mr. Stimson's strong feeling that there ought to be a judicial proceeding before execution. But I have also been very worried by the prospect of a trial which might be drawn out almost indefinitely, in which all sorts of things might be raised and discussed - whether legal or historical - leading to controversy and debate in the world at large, with a reaction which we can hardly calculate. I hope very much that you will feel the force of what I have written, for I regard it as the first condition for the successful handling of this most difficult matter that there should be agreement between your authorities and our own.

I ought to add that, while I am taking upon myself to send you this description of the plan, I am not writing with the authority of the War Cabinet, though I know that the members of the Government whom I have consulted view the suggestion with favour.

I think the number of individuals who should be dealt with under this plan would be quite limited. They would be the people whom the public know as being the principal leaders in plotting and planning world supremacy,

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to be attained by these villainous methods. As regards the intermediate class represented by the chiefs and members of the Gestapo and the S.S., I appreciate the value of your suggestion based on an allegation of conspiracy in a common criminal endeavour. You are sending me a document which sets out this scheme in more detail, and I look forward to studying it. But I would most strongly urge that a limited number of men at the top whom the public know to be the chief architects of the war, such as Hitler, Himmler, Mussolini, Goering, Ribbentrop, Goebbels, ought to be dealt with a special method which will set out their real crime before the world, and not merely as leading specimens of a very much larger group.

With kind regards
Yours sincerely
Simon

The Honourable
Judge Rosenman.

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HOUSE OF LORDS,
S.W.1

7th April, 1945.

My Dear Judge,

Thank you for your secret letter of yesterday, enclosing the memorandum of the principal points on which there seem to be substantial similarity in our views, etc. I have read the memorandum with great interest and with sincere admiration of the clearness and precision with which it is drafted.

I sent you yesterday a letter setting out the method of treatment of Hitler and the other notorious leaders of the Nazi conspiracy, which I hope may commend itself to you and Mr. Stimson, so far as these men fall into our hands. I hope very much that the scheme will commend itself to you, while I, on my side, will urge the War Cabinet to favour the scheme you have outlined for dealing with the intermediate class of criminal associated with the Gestapo and the S.S.

We shall be meeting on Monday.

Yours sincerely

Simon

The Honourable
Judge Rosenman.

Copied by Col. Cutter

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COPY FOR JUDGE ROSENMAN.

1 Grosvenor Square, W. 1.
April 6, 1945.

SECRET

Dear Lord Simon:

Following our discussion of April 5, 1945, and as suggested by you, there was prepared the informal memorandum which I enclose. This memorandum contains an outline of the principal points as to which there seemed to be substantial similarity in our views, together with a summary of the major subjects remaining under discussion.

As I suggested to you at the recent conference, I feel very strongly that the Soviet and French representatives should be brought into the discussions at an early moment, and certainly before any definitive proposals are advanced by either of us. Accordingly, the enclosed memorandum is presented purely as an indication of the direction of our thought at present and with a view to ascertaining the extent to which you entertain similar views. I hope to receive a similar memorandum giving a summary of your views.

You will appreciate that this memorandum has been prepared rapidly in an effort to expedite consideration of this important problem. It should be regarded only as a tentative outline of a possible basis of discussion.

For the reasons indicated by you yesterday, I shall appreciate it if you will regard this memorandum as submitted in strict secrecy at this time.

With kindest regards,

Sincerely yours,

SAMUEL ROSENMAN

The Right Honorable
The Viscount Simon, P.C.,
The Lord Chancellor,
House of Lords,
S.W. 1.

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By Deputy Archivist of the U.S.
By W. J. Stewart Date JUL 25 1974

Enclosure: As stated
Copies Nos.1 & 2.

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File - "War Crimes"

INCOMING TELEGRAM

GPO

2625

NIACT

FROM THE DEPARTMENT (Very Secret)

5 April

For ROSENMAN

Reference your 3423 of 4 April. Complete authority is yours to discuss war crimes matters at highest level. Malkin may have in mind statement in British Embassy's note 6 March, copy of which was handed Colonel Cutter, that question of major war criminals was referred at Crimea Conference for consideration to the three Foreign Secretaries. No reason, however, is perceived why that subject should not be included draft agreements reached.

Great importance is attached by the Department to prompt conclusion of comprehensive understandings.

Our suggestion is that you and Ambassador see Eden and have him put you in contact with authorities authorized to speak for the Government.

Foreign Office is being cabled by British Embassy here.

ACHESON Acting

Copies: Judge Rosenman

hgs

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State Dept. letter, 1-11-72
By SR Date JUL 25 1974

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[redacted]

Copy for
Judge Rosenman

7 April 1945.

Major Davidson Sommers
Office of the Assistant Secretary of War
4E886, The Pentagon
War Department
Washington D.C.

Dear Dave:

I send you copies of the following papers:

(1) Letter to Judge Rosenman from the Lord Chancellor dated 6 April 1945 (3 copies).

(2) Copy of a letter from Judge Rosenman to the Lord Chancellor dated 6 April 1945 together with copies 3, 9 and 10 of the memorandum referred to in this letter. Copy of my notes of a conference in the Lord Chancellor's room 5 April 1945, and copy No. 5 of my notes of a meeting at the Indian Office held 4 April 1945.

Will you please see that Mr. Hackworth (State Department) sees all of these papers promptly. Would you see also that Judge Rosenman's letter and memorandum and the Lord Chancellor's letter are brought very promptly to the attention of the Secretary of War himself and the Attorney General. Point out to the Attorney General's office the necessity of secrecy (as tactfully as possible). This consultation with the Secretary of War and the Attorney General is at Judge Rosenman's explicit request. You should obtain from Mr. Hackworth for the Secretary of War and the Attorney General a paraphrase of a cable on this subject, which is being sent today to the State Department by Judge Rosenman. Mr. Harrison is probably the best contact with the Secretary of War. If he is not available, see Colonel Kyle.

Any comments should be cabled to us as promptly as possible as negotiations will proceed rapidly, and Judge Rosenman may not wait for comments.

We expect Mr. McCloy here the middle of next week so by Wednesday or Thursday it will be possible to talk with him about this matter, and he is being sent copies.

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E. O. 11652, Sec. 3(E) and 5(D) or (E)
CSD Letter, May 4, 1972
By SLR Date JUL 25 1974

[redacted]

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[redacted]

There are also enclosed letters from Judge Rosenman's to the President and to his Secretary. Please see that these are promptly delivered by hand.

Sincerely yours,

R. A. CUTTER
Colonel GSC

RAC:jm

DECLASSIFIED
E. O. 11652, Sec. 5(C) and 5(D) or (E)
OSD Letter, May, 3, 1972
By SLR Date JUL 25 1974

[redacted]

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[redacted]

Copy No. 2

xxxxxxxxxxxxxxxxxxxxx
xxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxx Room No. 126,

1 Grosvenor Square, London, W. 1.
9 April 1945

G. P. Coldstream, Esq.,
Assistant Secretary to the Lord Chancellor,
Lord Chancellor's Office,
House of Lords,
S.W. 1.

Dear Mr. Coldstream:

At your request I have prepared a memorandum of my comments upon your notes of the meeting of 5 April. I submit these comments for such assistance as they may be.

I am inclined to the view that the most (and possibly the only) important change is to reflect the fact that at the end of the meeting, it was our understanding that the appropriate time and method of approaching the Soviet and French groups was a matter to be discussed between Judge Rosenman and the Ambassador (Mr. Winant), on the one hand, and the Foreign Office on the other, after the Lord Chancellor had obtained the informal advice of the War Cabinet. I mentioned this to you by telephone on Saturday.

I have not attempted to check these comments with Judge Rosenman, as I assume that they are merely informal notes of general discussions and are not intended as minutes.

Sincerely yours,

R. Ammi Cutter
Colonel, General Staff Corps.

Inclosure: Comments on Mr. Coldstream's Notes of Meeting in the Lord Chancellor's Room on Thursday, 5th April 1945.

RAC:ect

[redacted]

E. O. 11652, Sec. 3(E) and 5(D) or (E)
OSD letter, May, 3, 1972
By SLR Date JUL 25 1974

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Copy No. 2

[redacted]

9 April 1945

Comments on Mr. Coldstream's Notes of Meeting
in the Lord Chancellor's Room on Thursday, 5th April 1945.

Paragraph 2(1) - Suggest strike out "and that his Government had agreed to abandon it" and substitute "and that there was no desire on the part of his Government to proceed further with it".

Page 2, paragraph 2(2) - last sentence of second whole paragraph on page - suggest revise to read "Judge ROSENMAN said that he had conceived the mixed military courts as being composed of Allied officers of several nations, including smaller nations."

Paragraph 3 - 1st par., line 10 - Should "affect" read "effect"?

In the same paragraph, did not the Lord Chancellor include in his document of arraignment outline, the criminal violation of treaties by Germany involved in waging an aggressive war (in disregard of the Kellogg Pact).

Page 3 - 3d whole paragraph on page - line 2 - "Principal" should read "principle".

Page 3 - Heading at bottom of page - Suggest strike out "JEWS" and substitute "VARIOUS MINORITY GROUPS".

Page 4 - 1st whole paragraph on page - Start "As to class (3), the Judge said, in substance, that ....." - The proposal is, of course, stated in great detail in the Judge's memorandum of 6 April to the Lord Chancellor.

Line 6 of same paragraph should start ".....and other similar organizations, and the organizations themselves as associations, should..."

Line 10 of same paragraph - After "conspiracy" insert "or enterprise".

Next to last line of paragraph - Strike "found" and insert "established".

Page 5 - 1st paragraph - last sentence - Strike "The Foreign Office ought to approach" and insert "appropriate means ought to be devised for approaching".

Suggest in the conclusions after the words "IT WAS AGREED," that you strike out paragraph (4) and substitute substantially the following as a new paragraph not numbered:

"It was anticipated that the Lord Chancellor would acquaint the War Cabinet with the English and American suggestions and obtain their authority for his continuance of discussions along the path indicated above. He would recommend, not that the War Cabinet make a definite decision in the first instance, but that it indicate general approval of the suggestions in principle, subject to their later working out in detail-

a with the U.S. representatives so that there will be substantial similarity of thought between the U.S. and U.K. Governments and (at the proper time) -

b with appropriate Soviet and French representatives, when they have been approached in suitable fashion.

Approval would also be sought for U.K. participation in approaches to the U.S.S.R. and the French, in a manner to be determined between the U.S. Ambassador (or Judge Rosenman) and the Foreign Office." [redacted]

NARS
E.O. 12356, Sec. 3.3 and 6(D) or (E)
OSD Letter, Nov. 1, 1973
By SLR Date JUL 25 1974

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WAR CRIMES

See cable W-59977 dated March 28th

in CABLE file.

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COPY FOR JUDGE ROSENMAN

1 Grosvenor Square, London, W. 1.

~~SECRET~~

April 10, 1945.

Dear Lord Simon:

I acknowledge with thanks the very interesting statement of your proposal for the trial of the six or seven principal Nazi and Fascist leaders set forth in your note of April 6. As I am sure you understand, this matter is one of very great interest to the State Department and the Secretary of War. I have transmitted copies of your note to Washington requesting their comments and hope to be in a position to talk with you about the proposal at greater length in a day or so.

In the meantime, I think it is entirely appropriate for such representatives as you may designate to work with General Weir and Colonel Cutter in discussing the details of the proposals which you and I have respectively put forward for consideration. I think at an early moment some one representing you and Colonel Cutter should be constituted a Drafting Committee to work out a memorandum of the points upon which we are in substantial agreement with a view to having definitive proposals ready to present for a four-party discussion at the earliest possible moment.

I understand that Sir Thomas Barnes, Mr. Coldstream, General Weir and Colonel Cutter are to see the Attorney General today and discuss certain procedural points. After that I think it will not be premature for the small two-man Drafting Committee which I suggest to start work.

Sincerely yours

(signed) SAMUEL ROSENMAN

The Right Honorable
The Viscount Simon, P.C.,
The Lord Chancellor,
House of Lords,
S.W. 1

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