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Letter from The Lord Chancellor to Judge Rosenman

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OSD letter, May 3, 1972

By ALLI-1162, NARS Date 10-17-73

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,)

(Sgd) Simon



The Honourable
Judge Rosenman.

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Notes of Meeting - Mr. Coldstream's Office - House of Lords10 April 1945

Present:	<u>U. S.</u>	<u>U. K.</u>
	General Weir Colonel Cutter	Sir Thomas Barnes (presiding) Sir William Malkin (left early) Mr. Dean (F.O.) Mr. Wardrop (F.O.) Colonel MacLeod

The meeting convened about 2:30 P.M.

The discussion first centered on the problem of the arch-criminals. The drafting of the proposed document of arraignment was first under consideration. Colonel Cutter made the following principal points:

1. That any discussion should proceed on the basis that we had not yet received comments from Washington on the Lord Chancellor's proposals and on the theory that discussion of details might hasten agreement, in case Washington approved the general course proposed (subject to possible modifications in emphasis). The U. K. side expressed the same views pending instructions from the War Cabinet;

2. That we felt the function of drafting any bill of arraignment for major war criminals might reasonably be under the same executive agency which was proposed in Judge Rosenman's memorandum of 6 April, subject to such political guidance as the four governments might wish to give their respective representatives;

3. That it was important to set up the executive agency at an early moment and get it working on the two main cases:

- a. arch-criminals
- b. organisations

4. That the problems were much the same on these two cases;

5. That we did not want to do more than get agreement on a suitable basis of discussion - prior to raising the problems with the Russians and the French - but that ironing out our differences as far as possible (and providing a sound basis for solution) would advance solution of the problem;

6. That we visualized the executive agency as operating at a military level.

Sir Thomas Barnes indicated that they wanted this agency to operate in London. The U. S. side replied (a) that this might prove convenient in view of the fact that the Russians might prefer it to Paris (since the U.S.S.R. does not participate in SHARP) and because work must start before offices in Germany (under the occupation) could be available, and (b) that eventually much of the operations would have to be in Germany - since the U. S. and U. K. did not want the trials in either of their countries - and there presumably would be awkwardness about trials in Belgium, France or Russia or in any United Nation.

Colonel Cutter indicated that if the Russians wanted the work done in Moscow, although it would be inconvenient, it might be a small price to pay for collaboration and agreement.



It was tentatively agreed that

- a. all evidential material now available should be collected and examined by the countries having possession of it, acting independently;
- b. instructions should go out to the U. S. and U. K. military, respectively, about collecting and preserving evidence which would tend to support the theories of prosecution so far as possible;
- c. Recruiting of personnel to handle executive work should be initiated.

Discussion then ensued as to the form or extent of trial under the document of arraignment. Oral evidence of any type was objected to by some of the English. Sir Thomas Barnes and Mr. Coldstream seemed to recognize that there might be advantages of a reasonably documented case and the practical difficulties in refusing to permit the defense to offer evidence controverting the facts alleged in the arraignment.

The U. S. side indicated that they felt very substantial documentation of the case was desirable and would be insisted on by those who wanted a full trial; that the more closely the proceedings conformed to usual court procedures the more satisfactory it would be to such persons; and that progress might be made by very full documentation, e.g. use of original documents, extracts from Hitler's own writings and speeches, proof of the Nazi system linking up what was done at the bottom of the hierarchy with power, knowledge and responsibility at the top. On this question there was no substantial agreement.

Mr. Dean said the Foreign Office would want to bring the smaller nations into the picture in some way. The United Nations War Crimes Commission was recognized as being a possible liaison agency with them. General Weir raised the question of whether it would not be possible to permit these nations to prepare a statement, duly authenticated, of the atrocities committed within their countries for use in connection with the arraignment, possibly as exhibits. It was suggested that these nations be permitted to adhere to any executive agreement.

At this point the meeting adjourned to the Office of the Attorney General, in The Law Courts, The Strand.

Here there was a prolonged discussion of many of the same points.

Mr. Coldstream indicated that there was general agreement that U. S. and U. K. groups should start work independently and separately in gathering material of the type useful in

- a. whatever case might be brought against the major war criminals, and
- b. the case against the Gestapo and S.S.

There was some discussion of who should draw the bill of arraignment. The Attorney General said he had prepared two rough drafts:

- a. bill of arraignment (Copy attached - TAB A);
- b. count in indictment (Copy attached - TAB B)

against the organizations. These, he said, were still tentative and thoroughly subject to approval above and to revision. They were obviously merely sketch outlines.



The Attorney General indicated that he felt the drafting and approval of this document was for the "highest level" as a political matter; that he deplored treating this as a trial or a court proceeding; that he visualized it as a political proceeding; and that it should be treated as such.

Colonel Cutter pointed out that we in the War Department were bound by the view, which we understood Mr. Stimson held, that there should be a trial; that this view had been brought to the Lord Chancellor's attention; that the precise nature of the trial might be a matter of discussion and agreement, but that we supposed a judicial proceeding to be necessary. He raised for consideration the possibility of a comprehensive documenting of the bill of arraignment which (together with a broad common-sense taking of judicial notice of facts of general public knowledge) might provide a full basis in fact for action by the courts or tribunal. He pointed out that whether the Lord Chancellor's proposal would be regarded as an adequate trial might well depend on the degree to which documentary proof was attached to the document of arraignment. He felt that the accused must be permitted to make not only written reply to the arraignment but to offer oral testimony and a personal plea, controverting facts alleged in the arraignment, and that the prosecution might appropriately be ready to meet this. Of course, the more this document of arraignment alleged incontrovertible facts, the more likely it would be that the defense evidence would be insubstantial and brief. Colonel Cutter made it clear that, until comments from Washington were received, it would not be possible to discuss in any final way the Lord Chancellor's proposals.

The question of whether the proposed executive organization should deal with both the arch-criminals and the case against the organizations was discussed. There was apparently some misunderstanding between the Attorney General and Colonel Cutter at this point as to what the executive organization was intended to be and do. However, the Attorney General made it clear that he had no objection to a suitable liaison organization, if it could be headed on the U. K. side by responsible people, who could give it only part time attention. This was necessary from his standpoint because

- a. of his feeling that policies needed coordination on a high level (Foreign Office, Attorney General, Lord Chancellor, Services);
- b. of manpower shortages;
- c. of the fact that this method would provide better U. K. leadership than would otherwise be possible.



Colonel Cutter suggested that the preparation of the cases and their trial should be viewed as essentially military - as a part of the occupation operation because:

- a. all dealings with Germany for psychological reasons should be military in character (although civilian participation was practicable and should be arranged) and, of course, political direction on policy was appropriate);
- b. the people we would have in Germany would be army people, operating under the U. S. Commander and the operation should be a coordinated one.

He further pointed out that coordination on a four party basis would be difficult, if not impossible, unless very promptly representatives of the U. S., U. K., U.S.S.R. and France were designated to deal

with this matter and came to sitting around a table regularly and planning on a coordinated, cooperative basis for the conduct of the cases. He visualized at least a consultative policy-forming group - consulting with regularity - and hoped for a fully integrated 4-party operation. He pointed out that this would be a day to day operation on which only very general policy guidance could be expected from the top level and that there must be a working group in charge of these particular problems.

The Attorney General eventually stated in substance that he saw no objection to organizing in London a joint (presumably 4-party) liaison organization charged with responsibility for planning, recommending policy on and supervising

- a. the trial of the top men and
- b. the trials of organizations, especially the Gestapo.

(He felt the liaison group would have only advisory and assisting functions, if any, in connection with individual trials of war criminals charged with specific crimes.)

This executive group would naturally on major questions of policy seek governmental direction from their own nations. The U. K. would propose to use men charged with various other duties (e.g. Sir Thomas Barnes) as thus they could obtain more able personnel and meet the manpower shortages.

The Attorney General suggested that the War Crimes Commission's sources of evidence should be fully explored, especially with respect to the smaller nations. Mr. Dean pointed out the awkwardness of expecting the Russians to use the War Crimes Commission.

Discussion then took place as to what could be done about clarifying the channels of communication with the Soviets and French. It was agreed that only the most tentative judgments on this could be reached - until after the U. K. side had heard from the War Cabinet and the U. S. side had heard from Washington - and there had been consultation between Judge Rosenman and Mr. Eden.

Mr. Dean suggested the approach should be tied into the Moscow Declaration which contemplated Allied agreement on the subject.

Mr. Dean (of the Foreign Office) said that office had two doubts about the trial of organizations:

- a. It doubted the wisdom or political expediency of the trial of too many persons.
- b. It felt that some portions of the S. S. and S.A. might not really be susceptible of treatment under a "conspiracy" or "common enterprise" theory - because some sections of these groups were not volunteers, some sections did not engage in atrocity work at all, and some were purely military organizations.

He seemed shocked at the trial of 225,000 Gestapo people. The U. S. side pointed out the need of detaining these people for security reasons anyway, but agreed that the Stage 1 proceedings should determine what parts of what organizations had participated in the common enterprise and to what extent.



The Attorney General pointed out that whether you proceeded against the members of any particular organization or part of an organization in the Stage 2 proceedings would depend on the findings in the Stage 1 proceedings. He also indicated that he felt we could best consider how far to go in Stage 2, if at all, after Stage 1 was complete. Colonel Cutter stated that the U. S. proposal, of course, contemplated proceeding only against the member of only such organizations (or sections of organizations) in the Stage 2 proceedings, as had been found in Stage 1 to be participants in the original enterprise; but that the proposal was a unit and contemplated going through with both Stage 1 and Stage 2 to the extent that the facts warranted.

As to these members to be dealt with under Stage 2, the U. S. proposal contemplated a judicial hearing before an occupation court to determine the degree of participation by each member and hence the extent of punishment.

Mr. Dean pointed out that the Foreign Office would prefer, to some extent at least, to deal en masse with those considered in the Stage 2 proceeding, and not individually. The Attorney General pointed out that Judge Rosenman had indicated that mass administrative selection for reparations labor would not be looked on with favor by the U. S., although the punishment of duly tried war criminals in this way would not be distasteful, if the trial processes were reasonable and fair.

The meeting adjourned about 5:55 P.M. with only the most tentative conclusions, and with the Attorney General proposing to prepare a memorandum of certain views for further discussions.



TAB A

(Handed to Gen. Weir by the Attorney General (U. K.)
10 April 1946)

GROUNDS FOR PUNISHMENT OF HITLER AND HIS COLLEAGUES

I. During the years the Nazi Government rearmd Germany with the purpose of defeating the nations of Europe by force of arms unless they would submit and creating a Europe in which there was one Power Germany which would impose its will over the whole continent to serve the interests and to carry out the policy of Nazi Germany.

II. In the carrying out of this purpose Germany committed the following unprovoked attacks.

Set out the successive attacks from Prague awards giving references to the Treaties or Assurances of which they were breaches.



Germany in her aforesaid purpose obtained from the outset the collaboration of Italy and later of Hungary, etc.

III. In the territories occupied by her armies the German Government promoted and authorised methods of terrorism in breach of the laws and customs of war and contrary to principles of humanity - in particular

The taking and shooting of hostages by way of reprisals for acts of resistance.

The mass killing of men, women and children, in particular at

The use of torture as a means of obtaining information of resistance movements.

The deportation to Germany of civilians for forced labour.

IV. In her persecution of Jews in Germany before the war and by mass executions of Jews in Poland and during the war, the German Government pursued a policy of extermination of the Jews within

its power.

It is understood that the treatment of Russian prisoners of war has been brutal beyond words. One might also consider referring to the fact that Germany began the indiscriminate bombing of cities, Warsaw, Rotterdam, London.



TAB B

(Handed to Gen. Weir by the Attorney General (U. K.),
10 April 1945)

This organisation had among its objects the establishment of a reign of terror among those who were or were thought to be opposed to the Nazi Government of Germany.

Concentration camps were set up in which were interned Jews and others to the approximate number of

The methods employed in these camps were as follows:-

It was the intention of the heads of this organisation that its methods should be used in countries which Germany occupied and hoped ultimately to conquer and dominate with a view to stamping out by terror resistance and opposition to the German authorities.

In pursuance of this method in the occupied areas of

by the methods set out above and by torture the members of this organisation sought to terrorise any who might resist or be opposed to the Nazi authorities. Examples of the methods employed are set out below. These acts done by this organisation in pursuance of its objects were criminal acts contrary to the laws and usages of war.

