MEMORANDUM FOR THE PRESIDENT, THE SECRETARY OF STATE, AND JUSTICE JACKSON, SETTING FORTH SOME CONSIDERATIONS WHICH MAY BE PERTINENT WITH RESPECT TO THE TRIAL OF GERMAN WAR CRIMINALS.

It is my considered opinion that for political, economic, and social reasons of the most primary importance, it is essential that prompt, and as adequate punishment as the civilised procedure to which we are attached will permit, should be meted out to those responsible for the war and for the carrying through of the objectives of the Nazi Party and the Nazi German Government. I permit myself to say that I believe that those who are responsible in our Government today for the decisions to be taken in this respect have a responsibility not only to our own people but to Germany itself and to the rest of the world which must be carried through, not only because of the immediate situations with which we have to deal, but because our action now will depend so largely the character of the future problems with which we will be confronted. The adequate punishment of these war criminals is, I believe, an essential feature of and a factor in the maintenance of security and peace.
In our country, in Germany, and in no country in the world, I believe, would failure to take prompt and adequate and broad action be understood, and failure to do so would have wide repercussions.

I do not know the facts with regard to the manner in which the Soviet Government is alleged to have taken summary action in the execution of military and civilian officials whom they hold responsible for the attack on Russia and the crimes committed on her soil and against her people. It is probable, however, that in a considerable measure Soviet Russia has taken a purely realistic attitude, such as that which has consistently characterized her procedure, and has carried through many summary executions of war criminals in her power. I must say frankly that I do not believe that we are in a position to criticize Russia for any such action she may have taken because it is not likely that anyone not a war criminal was summarily executed, and because if, in addition to all else that we have suffered and borne, our territory had been violated and our civilian personnel and property destroyed as the Nazis did Russian persons and property, it is a question whether we would not have reacted in the same manner. If our people at home, in view of our traditions, may not agree with such summary executions, we are, I believe, nevertheless insistent upon punishment of an adequate character of war criminals, and any other action
action by our Government would leave wide deception among
our people, the significance and full extent of which we
cannot now foresee.

So far as Germany is concerned, the bringing to justice
and execution of some, and the permanent imprisonment and
seclusion of other war criminals is essential as a part of
the program of making possible a Germany which can eventually
live in peace with the rest of the world. The German people
today are aware of the guilt of those principally responsible
for the war and they are aware of their individual guilt.
We cannot bring to justice all of the Germans who have
direct or indirect responsibility for the war and for the
crimes, military and other, committed in connection therewith,
but we must bring a very considerable number of these to
justice and mete out punishment in various scales or we will
create a situation in Germany and among the German people
which will bear very bad fruit in the future and which will
make more difficult any rehabilitation programs which we must
carry through, and may even defeat such programs. Military
disarmament, economic disarmament, controls military and civil,
and re-education during a period of two generations are all
necessary and, in many ways, inseparable factors in the problem
before us now and in the years to come, but I am convinced
that prompt and adequate punishment of war criminals is an
essential
essential part of this program, and any weakness in connection
therewith on our part will bear bad fruit in Germany itself.

In this connection one must have an understanding of
the German psychology. For generations the Germans have been
taught that might is right and that force must control, and
have been taught that ruthlessness is an essential element,
and they will be the first to recognize not only the justice
but the necessity of broad and prompt and adequate action
with respect to the principal war criminals.

Parenthetically, in this connection I would like to make
the following observations which I believe are pertinent in
this matter. The United States and Russia today are the
two principal world powers. While England remains a great
power, her military, economic, and general strength are less
than those of the United States and Russia. We are the
principal world power today. We are stronger politically,
economically, and in a military sense than any other country,
and stronger in all these fields than Russia. In the political
field we are still stronger than Russia, but in this field
she is making great headway because of the ruthlessness and
definiteness of her policy, and she is determined to make
further headway. We may find ourselves in a relatively short
time confronted by a Russia with political influence which may
be as great as ours.
In the economic field we are stronger today than Russia and immeasurably so, and stronger than any other country. No other country than Russia has any chance to catch up with us in the economic field. It will take Russia relatively longer to gain strength in the economic field than in the political field. Russia is determined to increase her economic power. She is going to do so. Only the years can determine whether it is only a question of years before she may catch up with us in the economic field. The rate of progress in this respect will depend somewhat on the rate of development of her political as compared with ours. Even if Russia had no carefully defined program of economic development, her economic power would grow rapidly without such a program. To scoffers it is only necessary to point out what/conceptions existed among persons who thought themselves well informed with regard to the development of industrial power in Russia in the years immediately before the war. What did happen should give us an indication of what can probably and will probably happen. With a real program the economic power of Russia will develop more rapidly. The resources of her great territory, and the satellite States which she is inevitably bringing within her orbit, should and will be a great economic factor.
It will depend upon developments in many phases of activity when the time will come that the political and economic power of Russia will be equal to or greater than ours. They may never be equal to or greater than ours, but it is a situation that this is a possibility which we have to face.

In the military field we are stronger and much stronger than Russia today. So far as land armies are concerned, Russia can muster greater numbers in a military struggle in the near future than we can. So far as equipment, technical development, and quality of individual man power are concerned, we will, I believe, remain ahead of Russia indefinitely and for many years. In the naval field we are tremendously superior, but in my opinion, there is no doubt that Russia is going to begin very rapidly to expand her naval power as soon as she has met some of her more immediate problems of readjustment and rehabilitation. In this phase of power we can be ahead of her for a very considerable period, in spite of whatever efforts Russia may put forth. In the field of air power we are tremendously ahead and will remain ahead, but I believe that those competent in this phase of military activity would agree that there are unlimited capacities within Russia for the development of air power.

Looking at it from any aspect that we may, one thing seems to be certain, and that is that our position of dominance today,
today, which we did not seek, which we may not like, and which circumstances have thrust upon us in the political, economic, and military fields, is not likely to last as long as that of England. Instead of lasting for centuries, as in the case of England, in our case we may, within a few generations, be finding Russia almost as strong, or as strong, or even eventually stronger than we.

The foregoing thesis is very inadequately developed and is intended to be more thought-provoking than specific. I have not attempted to elaborate any phases of these ideas. I believe, however, that the basic ideas advanced are sound and that out of them we must draw the conclusion which I think we have already drawn, that it is essential for us to maintain the closest contact with Russia and to endeavor to maintain the friendliest relations, to try to avoid frictions, and to continue the processes in which we are now engaged of bringing about greater understanding on the part of responsible Russians of problems of which we, too, have only learned some of the elements in the last fifty years. If we exercise patience and understanding as we are doing now, and at the same time use the strength which we have wisely, there is much reason to believe that in the next years there will develop in Russia a new group of men who will be more understanding and more cooperative, and who will be less likely to be aggressive. It is also probable
that in such a period industrial and social factors in Russia will change in such a manner as to bring about a higher standard of living, which will make the economic differences and price levels now existing less obvious, and which will make the political and economic readjustments of power between her and us and the rest of the world less explosive and dangerous for peace. This means, too, that while Russia will increase in power politically and economically and militarily in the next years, it is altogether possible that we will not be drawn into an armaments race between the two countries.

This involves, however, that we have to get away from the idea that we must always work first and only with Britain, and then with others. In our political thought we shall have to be as realistic as the Russians are. I am one of those who have been perhaps most consistent believers in the necessity for the most close Anglo-American collaboration, and I still believe that it is essential to world peace and security. I think, however, we have to recognize that there is a third factor in the problem, and when I say "we", I mean England as well as ourselves. We have got to recognize that the political, military, and economic power of Britain will decline rather than increase. We have got to recognize that the political and economic power of the United States
and Russia will increases. It is absolutely essential for the
maintenance of world peace that Britain, Russia, and ourselves
work together, but this involves that we must not leave any
foundation for the Russian suspicion which so strongly exists
now and which is one of the principal problems with which
we have to deal realistically today, that irrespective of
the facts or circumstances, in the case of conflict we will
always be first on the side of Britain. In making this
statement I do not wish in the slightest to underestimate
the importance of Anglo-American collaboration, which I
consider just as important as ever, but it is just as important
for Russia as it is for us, and this involves that some of our
thinking has to change in the sense that in considering
bilateral arrangements we will be thinking in terms consistently
and constructively of three-power arrangements.

I have made mention of these foregoing considerations,
which may seem irrelevant in the matter of war criminals,
because so much depends upon what we and England do today
as tomorrow courses of developments in Russia and what her
attitudes will be. I am one of those who believe that if
we permit ourselves to be weak or inadequate in this matter
of war criminals and German war guilt, we shall presently
lose the respect and confidence of those who are governing
Russia today and responsible for her policy and who will be
shaping it for the years in the immediate future which will be

be so crucial.

I do not advocate that we follow the method of summary
execution which the Russians have allegedly followed, but
I do believe that we must proceed with prompt and sufficiently
adequate punishment of the war criminals or we will create
a situation in our relationships with Russia for the immediate
and immediately foreseeable future which will be a very
unhappy factor.

There will no doubt be constitutional lawyers and many
of our good people in the United States and in England who
will shrink from the idea of anything other than the usual
criminal trial, and who will advocate that this is the kind
of trial we should have for the German war criminals. Any
other procedure will, in fact, be repayment to them. For
this reason I believe it is necessary further to inform our
own public opinion so that it will have in mind more
definitely that in the first place this war was not a war
such as we have known in the past. Some little excuse
could be found in the past for most wars, or some justification
could be built up for them. For this war there can be no
such justification or such excuse. It is a war criminally
undertaken by a Government and a people for the purpose of
securing world domination, and it involved the enslavement
of all other peoples as a definite objective. In bringing
about this war, every known rule of international law and
Justice
Justice was deliberately broken by the German Government and its responsible leaders. Further, this war was not fought in accord with any of the rules of war by Germany. Certain of her Generals may have endeavored to maintain the rules of war, and in some cases succeeded. Those who are responsible for this war and for its conduct, and for the military crimes that were committed, and for the crimes against civilians and against property, placed themselves beyond the pale of juridical procedure as we know it, and they knew they were doing so when they did it, but they were prepared to take all risks because by their very ruthlessness they were going to dominate. They openly and deliberately declared their intention to dominate the world and to enslave other peoples. They deliberately and openly declared their intention to destroy the sovereignty of other States and peoples. They deliberately and openly declared that any methods which were necessary to achieve that end were justified. In provoking the war and in carrying it through, they were guilty of acts which placed them beyond the jurisdiction of any court of justice as we know such courts and which would be governed by its rules. They themselves placed themselves without the law by their own aims and acts and crimes. They deliberately declared that they had no use for treaties or for the rights of others or for the law. They made for themselves
themselves in Germany a code of laws which recognized in the political, economic, and individual field no principle except that of force, and which denied all real right to the individual. For us, therefore, to endeavor to apply the usual rules of justice and trial for those responsible for the war and its conduct would place us before the world in ridicule, for we would be applying to them principles which they denied to others and the very existence of which they ignored and denied.

The guilt of those who were in the German Government, and many military and civilians responsible for these crimes is an historical record which has been written in the declared aims of the Nazi German Government and in its destruction of the sovereignty of other countries, and in the enslavement and murder and persecution of their peoples. They themselves wrote the record. They themselves have written the indictment against them. There is no necessity for proof, for the proof is in the war which they provoked, in the property which they destroyed, in the cruelties which they inflicted, and in the enslaved labor which they enforced. Of these things there is no further need of proof. They are historical record.

It is therefore my conviction, which I respectfully advance for consideration, that when these war criminals are brought to the bar of justice it must be a summary court not governed
governed by the usual laws of criminal procedure. In my opinion all that is necessary to do when any of these persons are brought before the courts is for the criminal responsibility of Germany to be established in a brief statement, the individual rank and post of the person before the court in the Nazi Government or administrative hierarchy be established. Proof of such position is sufficient for responsibility and judgment. Proof of specific acts is not necessary and would make the trial a farce before the world. After such a statement by the court officer, it may be considered as advisable procedure that counsel assigned to the defense be permitted to make a brief statement and, in the discretion of the court, the individual criminal before it may be permitted to make a brief statement. The court, in my opinion, should then pass summary judgment without discussion, without the hearing of witnesses, and without interrogation. I respectfully submit that this is the only procedure which with dignity and honor, and justice and effectiveness, is possible.

We need only recall what happened when certain persons were brought before a civil tribunal in the United States within the last few years and during the war itself. When in spite of the fact that they themselves had written the proof of their guilt in their notes and words, the trials
degrenated into a mere struggle between lawyers for the prosecution and the defense. The net result was that even though in the midst of war, the drastic and adequate action which should have been taken and which the public expected to be taken was not taken. The present trial of Pétain in Paris is similarly significant. The guilt of Pétain is written in the secret history of Europe in the period before and between the first world war and the second. The guilt of Pétain is written in his own acts during the Vichy Government. Whatever may be said or denied as having been Pétain's inner reactions can have no effect because it is his official acts and the historical record which establish his guilt and his treason to France. The only question which was really before the court, or which should have been before the court, was whether sentence of death or imprisonment for the rest of his life should be passed on Pétain. Of the crime of treason to the French Government I believe there is no doubt. The question before the court was not that of guilt or of the crime, but of the nature of the punishment, and now we read daily in the press, to the horror of all the world, that the court has degenerated into a stage set in which the principal character, Pétain, keeps at least an honest and discreet silence, and
one of the principal actors is Laval, whose criminal responsibility is as great as that of any of the Nazis and who, in some ways, is more despicable because instead of fighting for his country, he sold it out.

I believe that one of the criteria which we have to bear in mind is that every member of the Nazi Government in any high position is responsible for the acts of the German Government as a whole, even though he may not have been directly associated with the execution of the acts. The members of the German Government were collectively responsible and individually so for the acts of the Nazi Government. There is no division or separation of responsibility. Every single member of the German hierarchy down to the heads of the State Governments, and even a bit further down, is as responsible as Hitler. How far down we shall go in the Nazi hierarchy so far as punishment by death or confinement is concerned is more difficult to determine, but one thing is, in my opinion, clear and that is that the death sentence alone cannot be passed and carried through solely on members of the Cabinet. It must extend to the so-called Under Secretaries and, in some cases, to secondary officials in these Ministries. Others, such as important leaders of the S.S. and S.A. and Gestapo, and the heads of the administrative machinery in the German States must, in my opinion, have
the sentence of death passed upon them and carried through. I know that this sounds drastic, but it will not seem drastic to the millions of those who mourn as a result of the Nazi criminality and terror. Those who will be executed, or even the total of those who will be executed and imprisoned, will be infinitesimal as compared with those the death of whom they bear the responsibility.

When it comes to certain lesser officials, the punishment of life imprisonment will be sufficient, except for those whose direct responsibility for atrocities must be brought against them as clearly established by the record, and where the death sentence is therefore the only possible one.

When it comes to the German Generals and military, the situation is even more difficult, but it must be borne in mind that while the highest Generals of the German Army at the beginning of the Nazi régime were not in favor of the régime, not even of its objectives for domination even on the more limited scale that the Nazis conceived it in the earliest years of the régime, they were interested in re-establishing the power of the German Army in order, as they thought, to re-establish German prestige in Europe and in the world. It must be recognized that in carrying through the rearmament programmes effectively, for the Nazis could not have done it without these Generals, they made it possible for the Nazis to carry
carry through their whole program. It must be recognized that while this was the position in the very beginning, a number of Nazi Generals quickly succumbed to the lure of power and the dreams of world domination which so rapidly developed among the Nazis. It cannot be ignored that as the German Generals saw the lack of action and the lack of consciousness of what was going on in other States, and as they saw the continued success of the Nazi officials whom they considered as dreamers, fanatics and, in many cases, madmen, they succumbed to the spell and became as Nazi as the Nazis themselves. While some of the Nazi Generals to the end may not have been in accord with the aims of the Nazi German Government, all of them in the end were instruments of that régime. It is my opinion that those Generals who are still alive and who early associated themselves so fully with the Nazi ambitions are just as guilty as Hitler, Goebbels, Goering and others in the high civilian Nazi hierarchy. Others of the German Generals endeavored to maintain the rules of war and, while they became imbued with the Nazi ideology and aims, they remained to a certain extent military men who wished to follow the rules of war. These, it is ventured, may be treated in a different category, and seclusion, that is, imprisonment, may be sufficient, but the stamp of guilt must be officially passed on them.
or they will go down in history, even among a reconstructed German generation, as heroes, which they were not.

So far as these Generals are concerned, who permitted officials of the German Government to treat persons, military or civilian, in an inhumane way, or who deliberately permitted the mass executions of persons military or civilian, as was the case in Poland and Russia and perhaps elsewhere, or who permitted in civilian camps in sections under their military jurisdiction atrocities and murders, these men are responsible no matter how high their military grade and should not only have the sentence of death passed on them, but it should be carried through for they failed not only their country but their military duty. I venture that as military officers having the means at their disposal to prevent such crimes, they nevertheless permitted them to be carried through under their eyes and jurisdiction and they are therefore just as responsible as though they had been carried through by their orders.

The foregoing memorandum is very inadequate and incomplete. I present it in all humility as the views of one who had, in his line of duty, such intimate contact with so many of these men responsible for these war crimes and many of whom were committing crimes when I was under the necessity of having such official contact with them. Out of the experience which I have had in the service of my Government, and out of such
such little wisdom which I may have acquired from that experience and observation, I consider it my duty to express these views, even in this inadequate form, for the consideration of our highest authorities.

México, D.F., August 5, 1945.