



**SECRET**

THE ASSISTANT SECRETARY OF WAR  
WASHINGTON

CLASSIFIED BY  
E.O. 11652, Sec. 3(D) and 5(D) or (E)  
OSD letter, May 3, 1972  
By MLT:ALC, NARS Date 10-17-73

4 December 1944

*Absolute*

Mr. Harry Hopkins  
The White House  
Washington, D. C.

Dear Harry:

I send you herewith a copy of a letter which I am sending to the Attorney General today on war crimes, together with a copy of enclosures.

I call your attention to the importance of avoiding public discussion of this matter at this time, lest it cause embarrassment to our people in enemy hands.

The most recent draft of the enclosed memorandum on war crimes (Tab A) has not yet been seen by the State Department and has not been finally approved within the War Department.

Sincerely,

*J. Edgar Hoover*



Encs.

CC ltr 3 Dec 44 Mr. McCloy to Mr. Biddle and encs.

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REGULATIONS  
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DECLASSIFIED  
E.O. 11652, Sec. 3(E) and 5(D) or (E)  
OSD letter, May 3, 1972  
By MLT/HK, NARS Date 8-17-73

4 December 1944

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SIGNED JOHN J. McCLOY



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E.O. 11652, Sec. 3(C) and 5(D) or (E)  
OSD letter, May 3, 1972  
By MLT/HK, NARS Date 8-17-73

4 December 1944

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DECLASSIFIED  
E.O. 11652, Sec. 3(c) and 5(D) or (E)  
OSD letter, May 3, 1972  
By ML-ak NARS Date 10-17-73

3 December 1944.

Honorable Francis Biddle  
The Attorney General  
Washington, D. C.

Dear Francis:

As you probably know, the Secretary of War has set up a division in the War Department to deal with the matter of trials of war criminals, and has done this in consultation with the Secretary of State. Although the Department of State is the agency of the government primarily responsible for determinations of policy in this connection, the War Department has considerable interest in the punishment of those who have committed offenses against its armed forces. Moreover, in the initial stages, the Army will be charged with the apprehension and detention of war criminals as well as with other aspects of the administration of occupied Germany. Since the courts for the trial of war criminals would probably be composed wholly or in large part of military officers, it was felt that the planning for the trials should be undertaken by the Army in close coordination with the Department of State.

A considerable amount of thinking and work has been done already in the preparation of plans for the setting up of tribunals for the trials of so-called war criminals. There are many difficult practical problems involved in an adequate prosecution of the offenders who have committed the numerous atrocities, which the declarations of the President commit us to punish. In the consideration of these problems, there is necessarily involved the matter of dealing not only with those Nazis who have committed war crimes against the armed forces and nationals of this and other United Nations, but also with those who have committed depredations against their own nationals.

As a result of these studies, many of us in the War Department have arrived at the conclusion that the Nazi criminals can



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By MLK/AV, NARS Date 12-17-73

be dealt with under the familiar principles of the common law of criminal conspiracy. This view incidentally has been adopted in a recent Carnegie study on the Axis occupations of other nations and a somewhat similar view has been expressed by Dr. Ezer in the United Nations War Crimes Commission, although it is by no means clear that his view will prevail there.

A general statement of the proposal which the War Department is considering is contained in a draft memorandum (TAB A) for the President from the Secretaries of State and War, which is enclosed herewith. This draft of the memorandum (TAB A) has not been seen by the Secretary of War or by the State or Navy Departments and has not yet been finally approved in the War Department. In an earlier form, also enclosed (TAB B), it was sent to Mr. Hackworth of the State Department and to Mr. Kane of the Navy Department for their comments. Their individual comments upon the draft memorandum are also enclosed, (Mr. Hackworth, TAB C; Mr. Kane, TAB D). I am likewise sending you comments of the Judge Advocate General (TAB E) on an early draft of what he calls the "G-1 Plan", the summary of which is contained in the draft of the memorandum to the President. The most recent draft of the memorandum (TAB A) does not propose its signature by the Secretary of the Navy, in view of Mr. Kane's memorandum (TAB D).

I think these enclosures can give you some appreciation of the state of our thinking on the subject. We will be glad to talk to you further about it at any time that you wish after you have had a chance to go over these documents.

We have attempted by making fairly substantial amendments of the earlier draft memorandum (TAB B) to give full weight to the comments of Mr. Hackworth and the later views of the Judge Advocate General. You will observe that the Navy comments (TAB D) recommend a somewhat different procedure. If the Navy adheres to Mr. Kane's views, that department will obviously not wish to join in the new draft memorandum (TAB A).

I wish to emphasize the importance of treating these studies as secret at this time, in view of the possibility of causing embarrassment to our personnel in enemy hands if public discussion should take place.

Sincerely,

(SIGNED)

John J. McCloy



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