MEMORANDUM

ON

TRIAL PREPARATION

(Approved by Chief of Counsel 16 May 1945)

Classified SECRET
Auth: By direction of the
Assistant Secretary of War
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Initials: H.F.
I. General

This memorandum sets forth proposed projects for procuring the evidence in support of the charges in par. 1 d of the Planning Memorandum.

The assumption is that each project will be assigned to an agency which will have the responsibility for preparing it.

Most of the projects will require coordination with, and the services of, agencies other than the agency of primary responsibility. The agency of primary responsibility will therefore be entitled to call on such other agencies for performance of their part or parts of the project, and will be responsible for integrating all the data into a completed whole.

For example, it is proposed to assign the project for proving the allegation of a common plan or enterprise to OSS. However, this project will involve, among other things, proof of the cartel arrangements by which Germany secured to herself important technological and military advantages. This part of the project would presumably be "subcontracted" by OSS to the Department of Justice, because of its special familiarity with the subject. The Department of Justice, in turn, might find it necessary to coordinate with still other agencies on the subject and will be entitled to call on them therefore. Accordingly, the Department of Justice would have responsibility for preparing what may be called the sub-project on cartels, and OSS would have the responsibility of integrating the results of that project and all other pertinent data into the larger project of which the cartel data form a part.

Necessarily, there will be a certain amount of overlapping...
and duplication. However, with proper coordination this can be kept to a minimum.

It is further assumed in this memorandum that the function of the Chief of Counsel's immediate staff will be to keep in touch with the specific projects or parts thereof to which they may be assigned, to follow them along, and, ultimately, to advise and assist the Chief of Counsel in integrating them for presentation on the trial of the case. The members of the staff will be responsible, among other things, for seeing to it that the results of the projects to which they are assigned are so formulated that the testimony will be admissible in evidence on the trial of the case.

II

As to the allegation of criminal plan or enterprise (PM par. 1 d (1) and par. 6):

This involves proof (1) that the plan aimed at the establishment of complete domination of Europe and eventually the world, (2) the identity and responsibilities of the participants in the plan, and (3) that the plan included or intended, or could reasonably have been expected to involve, the use of unlawful means for its accomplishment.

It is recommended that OSS be asked to take responsibility for preparing the proof of this allegation. Lt. Donovan states that a great deal of work has already been done and much material assembled on this subject. He will present within a week a detailed statement showing how this assignment will be carried out.

In the preparation of the project consideration will be given among other things to the following:

1. Proving what the defendants were planning to achieve and how they were planning to achieve it (a) from the documentary records created by the defendants and their associates, (b) from other available sources.
2. Showing the internal and external measures taken by the defendants (PM pars. 6 a. and 6 b.), and that these measures were taken (a) in furtherance of the common plan or enterprise, (b) in preparation for the launching and successful prosecution of aggressive wars and (c) the control, administration and exploitation of occupied areas by means and methods which had been perfected in advance through their use inside Germany.

3. Proving that the organizations concerned were composed of volunteers who were pledged to unconditional obedience, and that these organizations employed unlawful means in furtherance of the plan.

4. a. Establishing the structures, powers, and jurisdictions of the several organizations and agencies concerned (Reich, Nazi Party, Wehrmacht, SS, Gestapo, etc.), and their interrelations, and the functions, duties, authority, and responsibility of the individuals concerned, as the basis for finding their respective complicity.

b. Establishing like facts regarding controls and administration in the several occupied areas.

5. Establishing, among other things, with regard to the defendants' preparations for wars of aggression (a) their strategic preparations - occupation of Rhineland, invasion of Austria, etc., and their relation to the strategy of the World War: (b) material preparations - adoption of an "arms economy", stockpiling, "ersatz" developments, weapons and armaments developments; (c) building of strategic road nets and their significance in the conducting of the World War; and pertinent data of like kinds with the foregoing.

6. Showing, with relation to atrocities and other crimes committed at different times and places, a common pattern from which an overall policy and common responsibility can be reasonably inferred.
7. Proving such particular atrocities and other crimes as are pertinent to this general assignment and are not otherwise specially assigned.

8. Furnishing pertinent biographical data regarding individuals concerned in the plan.

Infiltration and fifth column activities in the United States and South America and cartel activities (PM pars. 6 b (1), (2), (3), (5), and (7) will be a sub-project which the Department of Justice should be asked to prepare.

Visual aid devices will be employed in addition to all others in preparing the foregoing proof for presentation on the trial.

III

As to the allegation that the defendants launched illegal wars of aggression (PM par. 14 (2) and par. 7):

This involves the compilation and analysis, in form admissible in evidence, of the pertinent treaties and conventions to which Germany was a party and the applicable provisions of international law in force at the times of the successive German invasions on the Continent, together with establishment of the facts constituting violations of such treaties, conventions, and provisions of international law.

It would be appropriate to assign this project to the Judge Advocate General, U.S. Army, to be prepared in coordination with the Department of State and other agencies of the U.S. Government as necessary.

In the event of agreement with others of the United Nations which would make such action appropriate, this project should also be coordinated with the Foreign Offices of such United Nations.

IV

As to the allegation that the defendants conducted their illegal wars by means and methods which violated international law, or the laws, rules, and customs of war, or the law of the sea (PM par. 14 (3) and par. 7):
The proof of these war crimes presumably will be found in a variety of places, including the War Crimes Office of the Judge Advocate General, U. S. Army, the United Nations War Crimes Commission, the data in the possession of the several United Nations (some of which, it is understood, have published "Black Books" on the subject) and Italy, the denominational organizations in the U. S. (Jewish, Federal Council of Churches, etc.), War Refugee Board and similar organizations, and the overseas theaters.

The objective will be to present the overall pattern by means of careful selection, compilation, classification and arrangement of the proof.

It is recommended that this project be assigned to The Judge Advocate General. The War Department will furnish sufficient additional staff to insure that the work will be done within the available time.

In connection with the material in the files of the United Nations War Crimes Commission, full use will be made of Colonel Hodgson's membership on the Commission, and, in addition, it is understood that OSS will make available personnel and facilities in London.

As to the allegation of atrocities and other crimes before and after the launching of the war of aggression, and during the continuance, in violation of international law or treaties, or the laws of Germany or one or more of its allies, co-belligerents, or satellites (PM par. 1 d (h) and par. 8):

Lt. Donovan states that a great deal of work has already been done and much material assembled on the subjects comprised in this project. Accordingly, it is recommended that OSS be asked to take responsibility for preparing it.

This project overlaps in part the projects in Sections II and IV above. OSS and The Judge Advocate General will coordinate their
respective activities so as to reduce duplication to a minimum.

VI

In connection with all the foregoing projects, the agencies of primary responsibility will be asked to prepare findings of the facts which they deem to be established by the proof obtained by them, and appropriate conclusions of law.

VII

Interrogation of defendants and witnesses in overseas theaters:

The theaters have been asked to inform the War Department what important possible defendants and witnesses have come into custody. It is not considered feasible to have these defendants and witnesses brought to the United States for interrogation.

Accordingly, it is proposed to send a team to the overseas theaters, consisting of a military member of the Chief of Counsel's staff and appropriate civilian associates to arrange that the theaters shall detail properly qualified personnel in sufficient numbers to interrogate such defendants and witnesses and to brief such personnel thoroughly in the desired lines of interrogation.

The interrogations should be conducted in such form that the proof obtained thereby will be admissible in evidence on the trial of the case. The privilege against self-incrimination will not run in favor of the defendants, and in their interrogation they should be so notified on the record, and should be warned that any refusal on their part to answer questions will be construed accordingly.