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PARAPHRASE OF CABLE FROM SECRETARY OF WAR TO MR. McCLOY, *file*
GEN. WEIR, COL. CUTLER

Because I still regard it important that the trials be judicial rather than political the conditions suggested by Judge Rosenman are necessary.

I have had little time to consider Lord Simon's suggestion but some phases of it impress me as advantageous. For example, he lays weight upon the inclusion in the arraignment of counts setting forth the criminal methods in executing the common enterprise used by the leaders. The importance of this is that it will be plain, beyond shadow of doubt, that under any legal principles the leaders' acts constitute crimes. For example, even if the common enterprise or conspiracy, let us say to wage aggressive war is not regarded as an international crime, it is highly sound that the evidence show the criminal methods employed by the conspirators to achieve their ends.

One of Judge Rosenman's conditions, I have specially considered, viz., that adequate documentary evidence must be used to support the arraignment to an extent that to prove the leaders guilty oral testimony will be unnecessary. As to what documentary evidence is available, I am not informed. The entire absence of oral proof by the prosecuting nations disturbs me. I cannot predict what the world public reaction will be. This is due to the possibility that the defense may assert vigorously the existence of wrongs by other nations against Germany and make reference to historic instances of nations which have used aggressive action as an instrument of national policy.



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E.O. 11652, Sec. 3(a) and 5(D) or (E)
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