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James Donovan

27 September 1945

MEMORANDUM to Mr. Justice Jackson

FROM Dr. Pathy

I wish to draw your attention to the following important legal question facing the entire phase of the interrogations which have been conducted to the present date.

Paragraph (a) of Article 16, Chapter IV of the Charter, bearing the title, "Fair Trial for Defendants", provides that the defendants must be served with an indictment setting forth in detail the specific charges against them. Paragraph (b) of the same Article provides, "During any preliminary examination of a defendant, and at the trial, he shall have the right to give any explanation which he may desire with regard to the charges made against him." The fair intent of these paragraphs would appear to be that at any preliminary examination and/or preliminary trial, the charges should be known to the defendants.

The question which disturbs me is that of the legal value of interrogations, admissions, oaths, etc., preceding the serving of the indictment or of any other document giving the defendants a notion of the charges against them.

The defense will most probably try to minimize the legal value of any admissions obtained during this early stage of the procedure (i. e., before the serving of the indictment) and will try to attack in form and in substance these interrogations. The defense will not fail to point out:

First, that the individual defendants were kept in ignorance of the charges against them;

Second, that they had no knowledge of their right to choose defense counsel, the fundamental constitution and jurisdiction of the Tribunal before which they are to appear, etc.

Since the actual serving of the indictment might take a few more weeks, I would like to suggest that as a first step and in order to obviate the foregoing objections of the defendants, a copy of the Charter translated into German be immediately served to the defendants. The Charter being actually the statute of the court and containing the enumeration of the crimes of which the Tribunal has jurisdiction, gives a complete picture of the organization of the international court, indicates to the defendants their right to choose defense counsel and tells them which pleas are barred, etc. Thus, the serving

of the Charter would serve a double purpose:

1. To grant a higher standing to all interrogations which are forthcoming;
2. To save valuable time in shortening the delay to which the defendants would otherwise be entitled between the serving of the indictment and the date of trial.

A. F. P.