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Tyranny on Trial – Trial of Major German War Criminals at Nuremberg, Germany, 1945-1946

Ten years ago I was standing at a podium in this very courtroom at the invitation of the Mayor of Nuremberg in remembrance of the trial of the major German war criminals at Nuremberg at the end of World War II. The trial before the International Military Tribunal commenced on November 20, 1945 and concluded on October 1, 1946. There were other war crimes trials following World War II, including the Tokyo trial in Tokyo and numerous trials conducted before national courts, including the twelve trials by American Military Tribunals at Nuremberg. There was, however, only one trial conducted against the twenty-two German war defendants by the International Military Tribunal at Nuremberg. I was the only American representative and the only former prosecutor present, and was invited to deliver the opening address.

It was a moment of intense nostalgia for me then, as it is this evening, to be speaking in the very courtroom where I spent a year of my life prosecuting the major Nazi war criminals. And it was particularly emotional then, as it is today, to realize that after the passage of so many years the German people, and in particular, the citizens of Nuremberg, itself, have come to accept the importance of the hard work which we did at Nuremberg in the advancement of international law in the Twentieth Century.

As I glance about this familiar room I note the three bronze plaques, which still adorn the lintel above the entrance to this courtroom. The centre plaque represents human frailty in the offering by Eve of the apple to Adam. On one side are the Roman fasces for authority; and on the other side a kneeling figure holding a sword, representing Justice. In this courtroom, sixty years ago, Justice vanquished Authority.

The genesis of the Nuremberg trial was the Moscow Conference of October, 1943 at the conclusion of which a statement was issued by President Roosevelt, Prime Minister Churchill, and Premier Stalin declaring the determination of the three powers to hold individuals responsible for crimes committed by them in the course of World War II. The statement warned that officers and men and members of the Nazi Party, who were responsible for or took a consenting post in atrocities, massacres or executions would be punished by joint decision of the governments or the Allies. The statement concluded: "Most assuredly the three Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done."

On May 8, 1945 President Harry Truman appointed Supreme Court Justice Robert H. Jackson the United States Chief of Counsel charged with obtaining the agreement of the Allies to a trial of the major Axis war criminals before an international military tribunal. Jackson succeeding in persuading the British to agree to the proposed trial and on June 26, 1945 representatives of the United States, Great-Britain, France and the Soviet Union met in London for the purpose of drafting an agreement for the trial of the Axis war leaders. I had served as a line officer in the Navy throughout the war. Toward the end of the war the Navy assigned me to active duty with the Office of Strategic Services. OSS sent me to London in charge of the investigation of Axis war crimes. I was in London on this mission when representatives of the Allied Powers convened to negotiate the London Agreement of August 8, 1945 for the trial of the major Axis war leaders.

From time to time I was able to provide the American negotiators with incriminating Nazi documents. I was invited to join the prosecuting staff, and with the consent of OSS moved with the first contingent to Nuremberg in August.

The principal repressive agency of the Nazi regime was the Reich Main Security Office, or RSHA. Both intelligence and special police agencies were combined in this office. Since I had acquired some knowledge of the Nazi intelligence system while serving in OSS, I was assigned the case against the Gestapo and SD, two organizations within the Reich Main Security Office, and against the chief of that office, the defendant Ernst Kaltenbrunner, who had succeeded Reinhard Heydrich in that position on January 30, 1943 after Heydrich's assassination in Czechoslovakia. I was provided an office down the...
hall from here, a second-hand typewriter, and a German secretary, and told to assemble evidence and write briefs against these defendants.

The major crime against humanity charged to the Nuremberg defendants was the extermination of Jews, Gypsies, Polish and Soviet intelligentsia and other unwanted minority groups. This crime was primarily the responsibility of the Gestapo and SD within the government and the SS within the Party. Thus, this part of the case fell primarily into my hands.

Our basic evidence against the Nazi defendants was documentary. I had collected documents in Great Britain while serving in OSS. Colonel Storey, Justice Jackson’s first executive trial counsel, had assembled a much greater collection in Paris. All these incriminating documents were assembled in the Palace of Justice, classified, translated, and made available to both prosecution and defense counsel. In preparing the case against the Gestapo and SD, and Kaltenbrunner, I searched the Document Room seeking evidence of Nazi crimes against humanity.

One document which I found was a letter written by SS Untersturmführer Becker, the operator of a gas van in the Eastern territories, to Walter Rauff, the head of the motor vehicles department of the Gestapo, in which he complained of the malfunctioning of a gas van he was operating which caused victims to die in suffocating agony rather than in gentle sleep as intended.

Shortly before the trial began, I learned that the British had under interrogation in London, Otto Ohlendorf, the head of Amt III of the RSHA, which dealt with matters of intelligence within Germany. I asked that the British send Ohlendorf to Nuremberg so that I might interrogate him on the organization of the RSHA of which my defendant, Kaltenbrunner, was the chief. The British did so, and I began my interrogation of Ohlendorf by asking him about his activities during the war. He said that, except for 1941, he had served as chief of Amt III of the RSHA. Naturally, I asked what he had done during that year. When he replied that during 1941 he had been in command of Einsatzgruppe D, I immediately recalled the Becker letter, which had been written from an Einsatzkommando, and was inspired to ask: “Well, Ohlendorf, how many men, women and children did your group kill during that year?” And he replied: “90,000!” That broke the case on the extermination program of the Einsatzgruppen in the Eastern territories, and we were able to establish through the testimony of Ohlendorf, and others, that approximately 2,000,000 persons, mainly Jews, were murdered by these units of the RSHA. It was the initial proof of the Holocaust. My esteemed colleague, Ben Ferencz, who is with us at this conference, was the chief prosecutor in the subsequent trial before an American Military Tribunal in which Ohlendorf and thirteen other defendants received the death sentence and seven others were imprisoned for this horrendous crime.

An especially dramatic moment of the trial was the cross-examination of Hermann Göring by Justice Jackson. Göring had assumed the role of leader of the defendants. He occupied the first seat in the prisoners dock. He was irritated by the apparent disinterest in the proceedings of Rudolf Hess, who sat next to him. But at every opportunity he sought to stimulate the other defendants to challenge the prosecution in every possible way. It was, therefore, of great interest to the press when Göring was brought under cross-examination by Justice Jackson. I was Jackson’s assistant in this dramatic moment of the case and sat beside him at the prosecutor’s podium. Among the issues raised was Göring’s role in the terrible pogrom of November 9/10, 1938 which has come to be known as Kristallnacht, the Night of Broken Glass.

This was the Nazi reaction to the murder of a secretary in the German Embassy in Paris by a German Jew named Grynspan. During the night Jewish stores were destroyed in Germany. Thousands of Jews were taken into custody and sent to concentration camps. Many were killed.

Göring met with Hitler and Goebbels to consider further repressive measures. Göring proposed imposing a fine of one billion Reichmarks on the Jews whose property had been destroyed so that all insurance benefits to which they would be entitled would, instead, be paid to the State. At a meeting the Reich Air Minister Göring declared that Jews should be forced out of the economy. Their property should be seized and only interest paid upon its under-valuation. “We must agree on a clear action”, he said, “that will be profitable to the State”. And he closed the meeting with these prophetic words: “I’d like to say again that I would not like to be a Jew in Germany ... . If in the near future, the German Reich should come into conflict with foreign powers, it goes without saying that we in Germany should
first of all let it come to a showdown with the Jews ..." Goring admitted making those statements. And he did not deny that in a letter dated July 31, 1941, shortly after the invasion of the Soviet Union, he had charged Reinhard Heydrich with the complete solution of the Jewish question in the German sphere of influence in Europe, some six months before Heydrich disclosed to high-ranking civil servants, meeting in a villa at Wannsee, Berlin, that the final solution of the Jewish question in Europe was to be, in fact, the annihilation of the Jewish race.

By the time we had rested our case we had not found the greatest killer of the regime, Rudolph Höss, the Commandant of Auschwitz Concentration Camp. It was, therefore, a dramatic moment when I was informed that Höss had been captured by the British near Flensburg. Although I had no idea how we could get his testimony into the record, I asked that he be sent to Nuremberg and interrogated him over a period of three days, reducing his testimony to an affidavit in which he confessed to the killing of two and a half million victims in Auschwitz and provided the details of this incredible human extermination. As a consequence we were able to put into the record the complete story of Auschwitz, and the mass killings of Jews, Soviet POWs and other victims in the camp, through the testimony of its Commandant.

In his closing speech to the Tribunal, Justice Jackson summarized the evidence supporting the guilt of the defendants, concluding with the following peroration:

"It is against such a background that these defendants now ask this Tribunal to say that they are not guilty of planning, executing or conspiring to commit this long list of crimes and wrongs. They stand before the record of this Trial as bloodstained Gloucester stood by the body of his slain king. He begged of the widow, as they beg of you: 'Say I slew them not.' And the Queen replied, 'Then say they were not slain. But dead they are...' If you were to say of these men that they are not guilty, it would be as true to say that there has been no war, there are no slain there has been no crime."

On the first day of October, 1946, the eight judges constituting the First Nuremberg Tribunal took their seats at the bench facing the prisoners’ dock, which was empty. Before it, the defense counsel occupied their chairs. To the left were the prosecution tables, occupied by the four Allied prosecutors and the principal members of their staffs. I sat at the American table. Behind us the visitor’s gallery was packed with members of the press and visitors. The defendants were to be brought into the courtroom, one at a time, to hear the sentences pronounced against them.

At ten minutes before three, the panelled door in the back of the prisoners’ dock slid silently open. The defendant Hermann Göring stepped out of the elevator which had brought him from the ground floor where the defendants waited. Göring put on a set of headphones which had been handed to him by one of the white-helmeted American guards. The president of the Tribunal began to speak. Göring signalled that he was unable to hear through the headphones, and there was an awkward delay while the technicians sought to correct the difficulty. A new set of headphones was produced, and once again Göring quietly awaited the words which were to decide his fate.

"Defendant Hermann Wilhelm Göring, on the counts of the indictment on which you have been convicted, the International Military Tribunal sentences you to death by hanging."

The number two Nazi turned on his heel and passed through the panelled door into the waiting elevator. The door closed, and there was a hum of whispered voices in the courtroom as those present awaited the arrival of the next defendant, Hess. Rudolf Hess, who had flown his Messerschmitt to England in a futile effort to persuade the British to abandon the fight with Germany, was sentenced to imprisonment for life. The other defendants appeared in turn and received their sentences. Twelve, including Martin Bormann who had been tried in absentia and the defendant, Ernst Kaltenbrunner, received death sentences; three were acquitted; and the remaining seven received varying terms of
imprisonment. The Tribunal declared as criminal organizations the Leadership Corps of the Party, the Gestapo, the SD, and the SS.

Appeals were taken by all of the defendants to the Allied Control Council, except Kaltenbrunner. The appeals were uniformly denied at a meeting of the Council on October 10. I had been designated by Justice Jackson as his personal representative at the executions and was present in the Palace of Justice on the fateful night of October 15-16, 1946. Shortly before midnight the electrifying word was released that Göring had cheated the hangman by taking poison while lying, ostensibly asleep, upon the bed in his cell. Death thus came to Göring by his own hand, as it had come to Hitler, Himmler and Goebbels, before him, even as the prison officer was walking to the cell block to give formal notice of the executions to take place that night.

At eleven minutes past one o'clock in the morning of October 16, the white-faced former foreign minister, Joachim von Ribbentrop, stepped through the door into the execution chamber and faced the gallows on which he and the others condemned to die by the tribunal were to be hanged. His hands were unmanacled and bound behind him with a leather thong. Ribbentrop walked to the foot of the thirteen steps leading to the gallows platform. He was asked to state his name, and answered "Joachim von Ribbentrop". Flanked by two guards and followed by the chaplain, he slowly mounted the stairs. On the platform he saw the hangman with the noose of thirteen coils and the hangman's assistant with the black hood. He stood on the trap, and his feet were bound with a webbed army belt. Asked to state any last words, he said: "God protect Germany, God have mercy on my soul. My last wish is that German unity be maintained, that understanding between East and West be realized, and there be peace for the world." The trap was sprung and Ribbentrop died at 1:29. In the same way, each of the remaining defendants approached the scaffold and met the fate of common criminals. All, except the wordy Nazi philosopher, Rosenberg, uttered final statement. After the executions the body of each man was placed upon a simple wooden coffin. A tag with the name of the deceased was pinned to coat, shirt or sweater. With the hangman's noose still about the neck, each hanged man was photographed. The body of Hermann Göring was brought in and placed upon its box, to be photographed with the others.

In the early morning hours two trucks, carrying the eleven caskets, left the prison compound at the Palace of Justice bound for a Munich crematory. There, during all of that day, the bodies were burned, one after the other. It was reported that in the evening the eleven urns containing the ashes were taken away to be emptied into the River Isar. The dust of the dead was carried along in the currents of the stream to the Danube — and thence to the sea.

The defendants who had received sentences of imprisonment were transferred to Potsdam prison, which had been designed for some 600 prisoners, but was now reserved for the seven from Nuremberg. As the years passed, the defendants completed their terms and were released. The last prisoner was Rudolf Hess, who had been sentenced for life. On August 17, 1987 forty-one years after the final judgment of the Tribunal, Hess managed somehow to commit suicide. With his death the Hitler tyranny ended.

The tyrant and his chief cohorts were gone. They had sought to achieve greatness in history. But they inscribed their names in sand, and clean waters fell upon the beach and washed them out. They had intended to establish a new order for Europe. But they built upon pillars of hate, and what they stood for could not stand.

The legacy of the trial of the major German war criminals before the International Military Tribunal at Nuremberg is a law-ordered world in which nations live at peace. It is not the fault of the Tribunal or its judgment that this legacy has not been fully accepted in the second half of the Twentieth Century. If Nuremberg had not occurred, and the anger of the Allies had been assuaged by execution of alleged war criminals without trial, world society would not have advanced an iota toward peace under law.

By a resolution of December 10, 1946 the General Assembly of the United Nations affirmed the principles of the Charter and Judgment of the International Military Tribunal and declared that any person who commits an act which constitutes a crime under international law is responsible and subject to punishment, and that the planning and waging of aggressive war constitutes such a crime. The precedent of Nuremberg is now a part of the law of nations, binding upon all governments and the leaders of all states.
Moreover its principles have been re-formulated in the Rome Treaty for a permanent International Criminal Court. At a special ratification ceremony held on April 11, 2002 at the United Nations headquarters in New York, ten countries simultaneously deposited instruments of ratification. Hans Corell, the Under Secretary General for Legal Affairs, declared: “In accordance with Article 26, the Rome Statute of the International Criminal Court will enter into force on the first day of July, 2002. A page in the history of mankind is being turned.” The Court is now dealing with its first case – the grave crimes against humanity committed in the course of the conflict in the Sudan.

Although of the great powers only the United States, China and Russia remain non-signatories, Germany, the nation whose despotic leadership brought on the Second World War, was the twenty-third nation to ratify by a resolution adopted on October 27, 2000. I was present in the Reichstag on that historic day, at the invitation of Hans-Peter Kaul, German delegate to the Rome Conference, judge of the International Criminal Court and a delegate to this conference. I was assigned a front seat in the gallery and was introduced from the floor. All the top leaders of the government were present, including Chancellor Gerhard Schröder, Secretary of State Fischer, Minister of the Interior Schily, Minister of Justice Däubler-Gmelin and Vice-Secretary of State Vollmer. After extensive discussion the Rome Treaty was ratified by the Reichstag without a single dissenting vote. No more significant approval of the principles of the Nuremberg Trial, and, indeed, of the principles of law and justice essential to peace on planet Earth, could ever have been made. After the vote Hans-Peter and I retired to a near by restaurant to toast this great victory of law over tyranny with fine German wine.

I concluded Tyranny On Trial, my book on the great trial at Nuremberg, with these words:

“Nuremburg stands firmly against the resignation of man to the inhumanity of man. Because of Nuremberg – and the effort which it represents of man’s attempt to elevate justice and law over inhumanity and war – there is hope for a better tomorrow. We may enter the atomic age determined that tyranny shall not extend its sway, nor war become its game – placing our faith in the cause of justice, in the freedom of man, and in the mercy of God.”
Whitney R. Harris

**Tyrannen vor Gericht – Das Strafverfahren gegen die NS-Hauptkriegsverbrecher in Nürnberg, 1945-1946**


Harris berichtet von dem dramatischen Moment, als die Ankläger die Möglichkeit hatten, den Kommandanten des KZ Auschwitz, Rudolf Höss, ins Kreuzverhör zu nehmen, und so zum ersten Mal der Holocaust gerichtlich dokumentiert werden konnte.

