

THE TRIAL OF THE CENTURY--AND OF ALL TIME, PART TWO

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There were two blockbuster witnesses at the Nuremberg Trial. When each of these two witnesses testified, the usual whispering and murmur of activity in the courtroom died away until you could hear a pin drop, spectators gasped silently, and all eyes focused in horrified fascination on the testifying witness. The first of these star witnesses testified on January 3, 1946. He was SS General Otto Ohlendorf, who had commanded Einsatzgruppe D, a special 500-man military formation of SS troops, Gestapo policemen, and Nazi intelligence agents which systematically massacred Jews in the Ukraine after the German invasion of the U. S. S. R. (Ohlendorf was hanged for his crimes in 1951.) Ohlendorf was, in the words of Robert E. Conot, "a gem of veracity." Unlike most Nazi mass killers, Ohlendorf freely admitted what he had done. Ohlendorf answered some of the questions asked him as follows:

"What was the ultimate objective of Group D?"

"The instructions were that in the Russian operational areas of the Einsatzgruppen the Jews, as well as the Soviet political commissars, were to be liquidated."

"And when you say 'liquidated,' do you mean killed?"

"Yes. I mean killed."

* * *

"Do you know how many persons were liquidated by Einsatz Group D under your direction?"

"In the year between June 1941 and June 1942 the Einsatzcommando reported ninety thousand persons liquidated."

"Did that include men, women, and children?"

"Yes."

"On what pretext, if any, were they rounded up?"

"On the pretext that they were going to be resettled."

"Will you continue?"

"After the registration, the Jews were collected at one place; and from there they were later transported to the place of execution, which was, as a rule, an antitank ditch or a natural excavation. The executions were carried out in a military manner by firing squads under command."

The other star witness who electrified the courtroom was SS Lt.-Col. Rudolf Franz Ferdinand Hoess, commandant of Auschwitz concentration camp from 1940 until 1943. He testified (as a defense witness!) on April 15, 1946. (Hoess, who was hanged for his crimes in 1947, is not to be confused with one of the defendants on trial at Nuremberg, Rudolf Hess, once Hitler's Deputy Fuhrer.) Like Ohlendorf, Hoess frankly acknowledged the truth about the mass murder he had committed. "Here, in Hoess," Ann Tusa and John Tusa have written, "were personified all the Nazi virtues of duty, hard work, obedience; and all the worst of Nazi callousness and bestiality. Here was a human being who had unleashed horror on a scale beyond imagination." It was Hoess who had constructed gas chambers capable of holding 2,000 people each. Some of his testimony was as follows:

"Didn't you exterminate about three million Jews in Auschwitz?"

"No. I never said three million."
"What did you say?"
"Two million."
"You said two and half million were gassed."
"Yes."
"And half a million died because of disease and epidemics?"
"Yes."
"Is that three million all together, or isn't it?"
"Yes. But not three million were exterminated."

As spectators gaped, Hoess also acknowledged the truth of an affidavit he had signed, which stated: "I commanded Auschwitz until 1 December 1943, and estimate that at least 2,500,000 victims were executed and exterminated there by gassing and burning, and at least another half-million succumbed to starvation and disease, making a total dead of 3,000,000. This figure represents about seventy or eighty percent of all persons sent to Auschwitz as prisoners."

Another reason the Nuremberg Trial is a landmark is that it advanced and bolstered the cause of international protection of human rights, especially where the human rights violations are committed by governments. Large-scale violations of basic human rights were recognized as criminal acts under international law, and individuals who had committed such violations while clothed with the power of a modern state were brought to justice and punished.

Furthermore, the fundamental due process principle that even heinous offenders are entitled to a fair trial and an adequate defense was spectacularly reaffirmed by the way the Nuremberg defendants were treated by the IMT. If there was anything repugnant to Nazis, it was giving a criminal defendant a fair trial. Denying a man or woman charged with crime a fair trial on the charges was not only Nazi practice, but also a Nazi principle. One of the defendants, Goering, for example, who like other Nazis had contempt for criminal defendants and their attorneys, had boasted in 1934: "We deprive the enemies of the people of legal defense... We National Socialists wittingly oppose false gentleness and false humanitarianism... We do not recognize the fallacious quibbles of lawyers or the monkey tricks of judicial subtleties."

The Allies, on the other hand, gave the Nazis what the Nazis never gave anybody and what they would never have given the Allies—a fair trial conducted in a dignified atmosphere, presided over by impartial judges. The defendants were represented by competent, diligent, court-appointed counsel, and the trial was conducted in what prosecutor Robert Jackson called "solemn grandeur." There were times when testimony about Nazi horrors plunged the courtroom into great sadness and sepulchral gloom; there were interludes when the courtroom sagged with boredom; there were rare moments of humor when the judges, the attorneys, the defendants, and even the white-helmeted military police guards would laugh or smile. But the tone in the IMT courtroom was usually one of deliberation, civility, calmness, grave earnestness, and respect for rights of the accused. There can be no greater contrast than that between the respectful judicial decorum of the Nuremberg Trial and the inhumane show trials, the hideous caricatures of justice featuring shouting, sardonic judges and browbeaten accuseds, that the Nazis gave their defendants.

And while the Nuremberg defendants were confined in close custody and under strict surveillance before and during the trial, they were never subjected to the torture and cruelties that Nazis regularly inflicted on their prisoners. There were no Gestapo cellars in Allied prisons.

The everlasting achievement of the Nuremberg Trial is that it firmly established, as a governing rule of law, what has been called "the Nuremberg principle," applicable to criminal proceedings generally. The Nuremberg principle has two parts. First, the fact that the crime charged was committed by a government officer or agent, whether high or low, is no defense to the criminal charge, and also is not a matter that mitigates punishment. Second, the fact that the crime charged was committed pursuant to a government order or to superior orders is not a defense to the crime charged, although it may be considered in mitigation of punishment.

The ten hangings, which officially brought the Nuremberg Trial proceedings to a close, continue to exert a morbid appeal. The eleventh Nazi condemned to death, Goering, committed suicide in his cell two hours before the executions were scheduled to begin.

The executions, in a brightly lighted prison gymnasium where three looming black wooden gallows had been erected, were witnessed by a handful of Allied military officers and eight journalists, one of whom, Kingsbury Smith of International News Service, wrote a famous newspaper article, "The Execution of Nazi War Criminals, 16 October 1946," based on his eyewitness observations. Although Smith discreetly omitted mentioning it, the experienced Army hangman, Master Sgt. John C. Woods, botched the executions. A number of the hanged Nazis died, not quickly from a broken neck as intended, but agonizingly from slow strangulation. Ribbentrop and Sauckel each took 14 minutes to choke to death, while Keitel, whose death was the most painful, struggled for 24 minutes at the end of the rope before expiring.

To the witnesses, however, what was most striking about the executions was not the death agonies of the Nazis, but the stern, unadorned, Old Testament righteousness of the hangings. As Robert E. Conot wrote of the ten executions: "It was a grim, pitiless scene. But for those who had sat through the horrors and tortures of the trial, who had learned of men dangled from butcher hooks, of women mutilated and children jammed into gas chambers, of mankind subjected to degradation, destruction, and terror, the scene conjured a vision of stark, almost biblical justice."

In 2000, a miniseries based on the Nuremberg Trial appeared on TV. The miniseries, entitled *Nuremberg*, was inspired by the Persico book, and starred Alec Baldwin as prosecutor Robert Jackson. Surprisingly, perhaps, the miniseries was, with some exceptions, historically accurate. The testimony of Hoess, the Auschwitz commandant, for example, which so stunned the IMT courtroom, was depicted quite truthfully. In fact, many of the courtroom scenes in the miniseries came verbatim from the Nuremberg Trial's published transcript. Perhaps the best scenes in the miniseries were when Alec Baldwin reenacted, quite accurately, Robert Jackson's splendid opening and closing speeches for the prosecution—speeches that authoritative lawyers regard as the greatest ever delivered at a criminal trial.

Remarkably, the actors who portrayed the trial defendants bore an amazing physical resemblance to the Nazi leaders actually tried. The miniseries was also correct in implying that Goering was

able to commit suicide with a poison capsule only because of assistance given him by Capt. Jack G. Wheelis, one of the military police guards. Since the publication of Ben E. Swearingen's book *The Mystery of Hermann Goering's Suicide* (1985), historians have generally come to accept Swearingen's conclusion that Wheelis, an immature, impressionable U. S. Army officer from Texas whom Goering showered with gift watches and jewelry, probably, out of mistaken sympathy for Goering, allowed Goering access to stored luggage where the poison was hidden, and then looked the other way as Goering went through the luggage.

History, it must be pronounced, has vindicated the Nuremberg Trial judge who, according to Telford Taylor, *The Anatomy of the Nuremberg Trials* (1992), wrote in his personal diary before the trial ended: "The historian of the future will look back to [the Nuremberg Trial] with fascinated eyes. It will have a glamour, an intensity, an ever-present sense of tragedy that will enthrall the mind engaged upon its consideration."

The official legal citation to the Nuremberg Trial, the most monumental trial of the 20th century, indeed of all time, is *United States v. Goering*, 6 F. R. D. 69 (Int'l Mil. Trib. 1946).

Table

NUREMBERG TRIAL INDIVIDUAL DEFENDANTS

Note: All the defendants sentenced to death were executed except Goering, who committed suicide.

- (1) Hermann Goering, convicted on all 4 counts, sentenced to death.
- (2) Joachim Ribbentrop, convicted on all 4 counts, sentenced to death.
- (3) Wilhelm Keitel, convicted on all 4 counts, sentenced to death.
- (4) Ernst Kaltenbrunner, convicted on 3 counts, sentenced to death.
- (5) Alfred Rosenberg, convicted on all 4 counts, sentenced to death.
- (6) Hans Frank, convicted on 2 counts, sentenced to death.
- (7) Wilhelm Frick, convicted on 3 counts, sentenced to death.
- (8) Julius Streicher, convicted on 1 count, sentenced to death.
- (9) Fritz Sauckel, convicted on 2 counts, sentenced to death.
- (10) Alfred Jodl, convicted on all 4 counts, sentenced to death.
- (11) Arthur Seyss-Inquart, convicted on 3 counts, sentenced to death.
- (12) Rudolf Hess, convicted on 2 counts, sentenced to life imprisonment.
- (13) Walter Funk, convicted on 3 counts, sentenced to life imprisonment.
- (14) Erich Raeder, convicted on 3 counts, sentenced to life imprisonment.
- (15) Albert Speer, convicted on 2 counts, sentenced to 20 years imprisonment.
- (16) Baldur von Schirach, convicted on 1 count, sentenced to 20 years imprisonment.
- (17) Konstantin von Neurath, convicted on all 4 counts, sentenced to 15 years imprisonment.
- (18) Karl Doenitz, convicted on 2 counts, sentenced to 10 years imprisonment.
- (19) Hans Fritzsche, acquitted and released.
- (20) Hjalmar Schacht, acquitted and released.
- (21) Franz Von Papen, acquitted and released.

