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Michael P. Scharf

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A TRIBUTE TO HENRY T. KING

Michael P. Scharf[†]

Henry King is the reason I'm teaching at Case Western Reserve University School of Law. Over the years he became my mentor, friend, and inspiration.

I first met Henry fourteen years ago at a conference at Boston College School of Law commemorating the fiftieth anniversary of the Nuremberg trial. He was seventy-six years old, but so full of vigor, vision, and passion. Since I had been involved at the State Department in establishing the first modern international criminal tribunal since Nuremberg and he had been a prosecutor at the Nuremberg trial, we had much in common and immediately developed a close friendship.

When Henry learned that I was originally from Shaker Heights, he had this "crazy idea" of bringing me home from Boston to teach law in Cleveland. As a first step in implementing his grand plan, Henry and then Cox Center Director Hiram Chodosh invited me to Case Western in February 2001 to present a talk about the Pan Am 103 bombing trial, which was the subject of a book I was (and still am) writing. A few months later they asked me whether I wanted to interview for the faculty slot that had opened with the retirement of eminent international law professor, Sid Picker. The day I was supposed to travel to Cleveland for my faculty interview and job talk was September 11, 2001—a day that would change so much about America and significantly affect the trajectory of both Henry's and my scholarly work.

I had the privilege of being Henry's colleague at Case for eight years, almost every day of which began with a visit or phone call from my wizened friend. Over coffee and Diet Coke, Henry told me

[†] John Deaver Drinko-Baker & Hostetler Professor of Law, Director of the Frederick K. Cox International Law Center, and U.S. Director of the Canada-U.S. Law Institute at Case Western Reserve University School of Law.

countless tales of his times at Nuremberg. He had a photographic memory and the flair of a master storyteller, and could effortlessly transport the listener back in time. Over the years, I myself have observed several of the world's most important war crimes trials—Milosevic and Karadzic (at the Yugoslavia Tribunal), Taylor (at the Special Court for Sierra Leone), Bagasora (at the Rwanda Tribunal), and Duch (at the Cambodia Tribunal)—but somehow my strongest memories are of the Nuremberg trials, through Henry's retelling.

Though he held so many prestigious offices and jobs over the years, Henry's journey through life was not without bumps and detours. He told me that he was shocked to find that he was somewhat of an outcast upon his return from Nuremberg. At the time, two U.S. Supreme Court Justices publicly castigated the Nuremberg proceedings as "a high-grade lynching party" and "a retroactive jurisprudence that would surely be unconstitutional in an American Court."¹ And Senator Robert Taft of Ohio gave a speech in 1946 criticizing every aspect of the Nuremberg trials—remarks that were immortalized when John F. Kennedy reproduced the speech in his Pulitzer Prize-winning 1956 book, *Profiles in Courage*. In an interview for my recent book about the trial of Saddam Hussein, entitled *Enemy of the State*, Henry described those times:

It was like the soldiers returning from Vietnam in the 1970s. The tribunal was a tarnished institution, and no one respected what we had done," the eighty-seven-year-old law professor told the authors in a recent interview. A graduate of Yale Law School, Henry King would go on to become director of the [precursor to the] Agency for International Development, and later Chief International Counsel for TRW and professor of law at Case Western Reserve University, but upon his return from Germany in 1946, doors were slammed shut when he sought a job.²

By the time I got to know him fifty years after Nuremberg, Henry had attained the academic equivalent of rock star status, speaking at dozens of conferences around the globe that celebrated the Nuremberg legacy. At Case, he helped me establish the War Crimes Research Office, which has now provided over 200 research memos to six international criminal tribunals that carry forward the legacy of

¹ MICHAEL A. NEWTON & MICHAEL P. SCHARF, *ENEMY OF THE STATE: THE TRIAL AND EXECUTION OF SADDAM HUSSEIN* 211 (2009).

² *Id.* at 212.

Nuremberg. Fifty-five of our students have interned at the tribunals, and five have obtained permanent jobs working for the prosecution, defense, and judges at the modern-day versions of Nuremberg.

Henry and I also began to partner in organizing the annual “War Crimes Research Symposium” at Case as a way of applying the lessons of Nuremberg to today’s salient international crises and challenges. We organized a conference in 2006, for example, on “Torture and the War on Terrorism,” which led to the promulgation of the “Cleveland Principles of International Law on the Detention and Treatment of Persons in Connection with the Global War on Terror”³—a document that was signed by over 200 leading experts and academics and provided to the U.S. Congress. The Cleveland Principles were intended as a clear restatement, written in plain English, of the fundamental international legal rules that apply to the treatment of persons in connection with the so-called “Global War on Terror.” The goal was to produce a text that would be easy for the American public, members of the military, and members of Congress to understand—a text that would unambiguously spell out that in the context of the Global War on Terror, there is no law-free zone; torture can never be justified; outsourcing torture is unlawful; and that government personnel may be criminally liable for involvement in acts of torture. I was later asked to testify about the Cleveland Principles before the U.S. House Armed Services Committee, which was considering ways to reform the controversial Al Qaeda Military Commissions.⁴

Perhaps our most important joint project was a 2008 conference and experts meeting on “The International Criminal Court and the Crime of Aggression.” The idea for the conference was planted ten years earlier, at the 1988 Rome Diplomatic Conference to establish the International Criminal Court (ICC). Henry, and two other former Nuremberg prosecutors, Ben Ferencz and Whitney Harris, participated in the Rome proceedings and used their unique moral authority, dogged persistence, and formidable skills of persuasion to convince the delegates to include the crime of aggression in the Court’s statute. But, in a compromise, the ICC Statute stipulated that before the Court can exercise jurisdiction over this crime, the States Parties must adopt a provision at a Review Conference setting forth a definition of aggression and the conditions under which the Court could exercise its jurisdiction over it.

³ See Frederick K. Cox International Law Center, *The Cleveland Principles*, http://www.law.case.edu/centers/cox/content.asp?content_id=85 (last visited Sept. 14, 2010).

⁴ See Public International Law and Policy Group, *Testimony*, <http://www.publicinternationallaw.org/publications/testimony/> (last visited Sept. 14, 2010).

The ICC Assembly of States Parties made little progress in the intervening years. So, in 2008, Henry and his old friend Ben Ferenz helped me organize a conference and experts meeting to attempt to advance the project of defining aggression with the goal of arriving at an appropriate trigger mechanism for the International Criminal Court to exercise jurisdiction over that crime. We were able to get Christian Wenaweser, the President of the ICC Assembly of States Parties, and several other important delegates to participate, as well as two dozen leading academics. The Cleveland Experts Meeting was chaired by David Scheffer, former U.S. Ambassador at Large for War Crimes Issues and head of the U.S. Delegation during the Rome Diplomatic Conference for the International Criminal Court. It was hoped that by holding the session away from the United Nations and involving a wide range of outside expertise and experience, new proposals could be developed and explored for the Assembly of States Parties' consideration.

One of the things Henry asked of me in his final days in May 2009 was to carry the mantle at the ICC Review Conference, scheduled to be held in Kampala, Uganda in May–June 2010. I ended up participating in the Kampala Conference as head of the Public International Law and Policy Group's six-person delegation, and met with most of the important players. I passed out dozens of copies of the *Case Western Reserve Journal of International Law's* "ICC and the Crime of Aggression" Symposium Issue, and it was as if I were channeling Henry as I repeated the arguments I had heard him make so often. At first it looked as if there was insufficient support for adding the crime of aggression to the Court's statute, and that Henry's dream would perish on the shores of Lake Victoria. But after two weeks of around-the-clock negotiations, the participants reached an elaborate compromise agreement, influenced in part by the proposals developed and debated at the Cleveland Experts Meeting. At ten minutes past midnight on June 12, 2010, Henry's dream of outlawing aggressive war was given new life.

In his last years, Henry had become a sort of Dalai Lama figure around the law school. His weekly brown bag lunch sessions with students were always packed and there were long wait lists to get into his courses. Right to the very end, he strived to instill in his students and colleagues his passion for changing the world through the rule of law.

Henry was also an ardent institution-builder. After his passing, the law school decided to permanently enshrine his name on some of the institutions that he helped create and develop, including the annual

Henry T. King Canada-U.S. Law Conference and the Henry T. King War Crimes Research Office. I was happy to accept Dean Rawson's request a few months ago to chair a special fundraising initiative to honor Henry's legacy and endow the institutions that carry his name, as well as an internship fund to launch the next generation of "Henrys" in the field of international law. As part of that effort, we put together a short video celebrating the accomplishments and impact of this tireless champion of international justice and the special Canada-United States relationship, which you can view at: <http://law.case.edu/Support/HenryKingFund.aspx>.

Through his lasting contributions to the law school, to the rule of law, and to his students and colleagues, the spirit of Henry King lives on!