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## PERSONAL REFLECTIONS ON NÜREMBERG

*Henry T. King, Jr.*<sup>†</sup>

I first became aware of Nüremberg as an opportunity from a classmate of mine at Yale Law School. The time was the fall of 1945. Prodded by my wife, I made application at the Pentagon to Colonel “Mickey” Marcus, the person in charge of hiring for Nüremberg. For me, Nüremberg was a big decision on which I had not fully made up my mind when I saw Colonel Marcus, and I am not certain how well my interview with him went. But as time passed, my determination to go to Nüremberg became firm. The application, however, did not move forward, and I saw the need for some politicking. It just so happened that John McCloy, the Assistant Secretary of War, had just joined the firm that I was leaving, Milbank Tweed & Hope. With the firm’s support, I sought McCloy’s help. It was not long thereafter that McCloy established contact with his successor, Robert Patterson, on my behalf.

Thereafter, I found myself headed for Nüremberg, sailing on the high seas on a very rough trip across the Atlantic. On the same ship were many of the colleagues with whom I would be working at Nüremberg. They were indeed a very diverse group. They included several of my classmates from Yale Law School, as well as individuals who had worked in the Prosecutors’ offices in Little Rock and Boston. They also included old pols – individuals who had been mayors of such cities as Nashville, Tennessee and Atlanta, Georgia. In passing, I might note that with regard to the latter group, I was never apprised of any significant legal accomplishments which they achieved at Nüremberg.

We arrived by train at Nüremberg in late March 1946 in a blinding rainstorm. We walked across the station to the Grand Hotel which was to be our home for much of our stay at Nüremberg. This was the hotel at which the top Nazis had stayed and played just a year before.

I did not get much sleep that night and rose early the following day to take breakfast at the Grand Hotel and walk to the Nüremberg Court House where the International Military Tribunal (“IMT”) Trial was under way. The Nüremberg I saw at that time was a city which had been almost obliterated by a British air raid in March 1945. I also learned that Nüremberg had suffered critical damage because of the refusal of Gauleiter Holtz of Nüremberg to surrender to Allied troops. As I walked to the courthouse it seemed as though civilization as it had existed had

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disappeared. There was just nobody around. People presumably were hiding in cellars and there were few, if any, stores open for the sale of food.

### **My Role at Nüremberg**

It was not long after I arrived at the Nüremberg courthouse that I was given the assignment of developing cases against three prominent individuals in the German military – namely, Walter von Brauchitsch, Commander in Chief of the German Army until his replacement by Adolf Hitler in December 1941, after the failure to take Moscow; Heinz Guderian, the Chief of Staff of the High Command of the German Army; and Erhard Milch, Deputy to Hermann Goering as head of the German Air Force and the individual charged with production responsibilities for the German Air Force.

I went right to work on this assignment almost immediately after my arrival. The support staff at Nüremberg was excellent. We had knowledgeable analysts, translators, investigators and interrogators. Many were expatriates who had fled Germany during the Nazi regime. Collectively this constituted a trial team of which I was proud to be a leader.

I dug in at Nüremberg with very little briefing and negligible supervision. As a self-starter, this role fit me to a T. At the age of twenty-six, I felt a great sense of responsibility and wanted to discharge this responsibility to the fullest with credit to both the prosecution staff and myself. Gathering and assimilating evidence into a comprehensive whole was the first task I assumed at Nüremberg, and I believe I did it well.

While the IMT proceedings were under way, I was a resource for work on the brief against the German General Staff and High Command and for Justice Jackson's closing statement. As a matter of fact, I remember staying up all night in late July 1946 preparing a proposed section of Jackson's statement dealing with the military defendants. I rushed down to the press room early the following day to see whether he had used my words and was deeply disappointed to find that he had not. I later found out that Jackson had an antipathy towards "ghosts," although he was not averse to using their ideas in his presentations.

My work in developing the case against von Brauchitsch went well. As commander in chief, he was responsible for Nazi atrocities on the Russian front. The Nazis tried to deny responsibility on the ground that the Russians had not signed the Geneva Convention of 1928 and that they (the Nazis), therefore, were not bound by it on the Russian front. The Geneva Convention was a set of rules which were applicable to the conduct of warfare. To the defense that Germany was not bound by it in its war against Russia, we countered with legal opinions of Admiral Wilhelm Canaris, head of the legal section of the German armed forces, that, even

though Russia was not a signatory to the Geneva Convention, rules of decency in the conduct of warfare and the treatment of prisoners of war and civilians were applicable. The Nazis kept excellent records, and in preparing the case against von Brauchitsch, I used these records against him extensively. When I finished, the Brauchitsch case was ready for trial. Just at that point, however, and to my great dismay, there was a high-level decision to turn him over to the British for trial. Thereafter, he was transferred to Great Britain for trial, but various delays occurred and he died before the end of 1948.

I also worked on developing a case against Heinz Guderian for his alleged activities in the suppression of the Warsaw uprising of 1944. This was a tougher case because much of the evidence was based on the testimony of Erich von dem Bach-Zelewski, who was a turncoat turned Nazi and had had an unsavory record as an SS General. Moreover, there were "chain of command" problems centering on the need to connect Guderian with the actual Nazi atrocities in Warsaw. I had not gone far in developing this case when I was advised that Guderian was to be turned over to the Poles for trial. The basis for this decision was that the atrocities he was to be charged with had been committed in Poland, and that therefore Poland should have the first crack at him. But Guderian only got as far as a transfer to Berlin because the U.S. and the Communist Polish government got into a dispute as to the proper border between Poland and Germany. This was a bitter dispute and eventually Guderian was returned to Civilian status in Germany without trial. I later saw news clips indicating that he was involved in neo-Nazi activity in north Germany.

The third defendant to whom I was assigned was Erhard Milch. Milch had been head of Lufthansa and had played a critical role in the revival of the German air force after Hitler's ascension to power. He was a close associate of Adolf Hitler and led the Nazi Air Force in the Battle of Britain. In that connection, he was on the cover of Time Magazine in August 1940. My job was to prepare the case against Milch, which I did, and subsequently played a key role in his trial and conviction. Milch was sentenced to life imprisonment at Nüremberg. He appealed this sentence to the U.S. Supreme Court to no avail.

The case against Milch was based on his use and mistreatment of slave labor, including prisoners of war and concentration camp personnel, and on his alleged ordering of human experiments carried out for the German Air Force at Dachau concentration camp. He was convicted of the former charge and acquitted of the latter because we could not demonstrably connect Milch immediately with the experiments. I have little doubt that, in actuality, he was guilty of both charges.

The problem for Milch was the violence of his language and the fact that this language was always recorded. There were uncorroborated rumors that Milch was half Jewish, and in a back-handed way, this may have contributed to the violence of his tongue. He recorded his antipathy

towards international law in so many words (“International law cannot be observed here.”) and he said that prisoners of war were not being treated with sufficient severity. Referring to prisoners of war, he said, “If he has committed sabotage or refused to work I will have him hanged right in his own factory.” Bear in mind that the use of prisoners of war in German armament factories violated the Geneva and the Hague Conventions. Suffice it to say these tracks left by Milch, evidencing his behavior in war-time Germany, were a prosecutor’s feast. All we basically had to do was to introduce into evidence his violent words recorded in the Nazi’s own files and the records of his involvement in the exploitation and mistreatment of foreign workers and prisoners of war engaged in Nazi aircraft production. I, myself, participated at the Milch trial in the cross-examination of Xavier Dorsch who was in immediate charge of the production of fighter aircraft in Nazi Germany’s underground aircraft factories. I secured from Dorsch an admission that death rates of Hungarian Jews engaged in such production were excessively high. This was helpful in securing Milch’s conviction. In the Nazi hierarchy, Milch was the responsible official for this activity and Dorsch’s admission tied Milch to Nazi murders.

After the Milch Case, I worked on the Ministries Case in the subsequent proceedings and also tangentially in the Justice Case. My recollection is that in the Ministries Case I prepared some preliminary drafts of an opening statement.

### **The Nüremberg Defendants**

The Nüremberg defendants in the first trial before the International Military Tribunal were, for the most part, well-known names in history. I was twenty-seven years old when I interrogated Herman Goering, Albert Speer, and others. I dealt from a position of strength in conducting these interrogations. With Speer I succeeded in getting him to describe his relationship with Adolf Hitler so well that it provided the basic ingredients for a book on Speer himself.<sup>1</sup> Goering, on the other hand, was a master raconteur. He colorfully described what it was like to attend various meetings, for example, between Hitler and Mussolini at the Brenner Pass. Here he always had a bad word for Mussolini’s son-in-law, the Italian Foreign Minister, Count Ciano. Suffice it to say that he was the most entertaining witness I talked to at Nüremberg. He was razor sharp and drug free when I was with him. Goering and Speer were the leading Nüremberg defendants and they were rivals at Nüremberg. It is now a matter of record that Speer effectively replaced Goering as the second most powerful Nazi under Hitler in the closing three years of the war.

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<sup>1</sup> HENRY T. KING, JR. & BETTINA ELLES, *THE TWO WORLDS OF ALBERT SPEER: REFLECTIONS OF A NUREMBERG PROSECUTOR* (1997).

The military defendants and witnesses were particularly well-known and I remember one young prosecutor who had a penchant for getting his picture taken with such military figures as von Rundstedt, Guderian and others.

The fact that at Nüremberg we were dealing with some of the most infamous names in modern history cast a shadow over the trials and accentuated their importance. Denials at the level at which we were dealing were less credible in light of the Nazi command structure and the Fuhrer Principle, which weighted so heavily superior orders.

### **Final Impressions**

I returned to the United States in the early fall of 1947.

Some final impressions:

1. The Nazi's penchant for recording every detail of their activities gave the prosecution staff a tremendous advantage. We had literally tons of Nazi records at our disposal.

2. We had a first-class support staff consisting of investigators, analysts, translators and interpreters, as well as some high-class secretaries.

3. Some of the prosecution staff succumbed to the delights of the bar or the boudoir and were ineffective by reason of such proclivities. Social life in Nüremberg centered around the Grand Hotel. Liquor flowed freely there and there was nightly entertainment in the Hotel's Marble Room led by Koenig and his orchestra, one of the great popular orchestras in Germany. Food was good there and plentiful. This contrasted sharply with what was outside on the streets of Nüremberg where food shortages and lack of shelter were rampant.

For those tiring of the Grand Hotel there was diversion in the form of the Farber Schloss which was a castle where the U.S. and foreign press covering the trials resided. The liquor supply at the castle was more than adequate and there was an opportunity for exchanges with the media at this establishment.

4. Nüremberg was great for self-starters like myself, but there was not much supervision for those who needed it. Resourcefulness was the order of the day for prosecutors such as myself.

5. Writing skills were vital. Skills in writing opening and closing statements were at a premium as were brief-writing skills.

6. The Nazis were well defended by excellent German lawyers, including leaders of the German Bar. The judges were fair – in fact sometimes leaning over backward to protect the rights of the defendants.

7. Sometimes in the subsequent proceedings the judges lacked a background in international law. They had a negligible support staff and this was not helpful. For the most part, they did a responsible job.