

Remembering Departed “Nurembergers”

John Q. Barrett*

When we gathered here in August 2009,¹ we had just lost our dear friend Henry T. King, Jr., a Nuremberg Prosecutor, teacher, and voice of conscience. Henry’s spirit is very much with each of us, including his Nuremberg prosecuting colleagues William Caming and Benjamin Ferencz, tonight.

We also, a year ago, had just lost Budd Schulberg. Budd had enormous talents and a life of big accomplishments, including great novels and other

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¹ See PROCEEDINGS OF THE THIRD INTERNATIONAL HUMANITARIAN LAW DIALOGS (American Society of International Law, Studies in Transnational Legal Policy No. 42, Elizabeth Andersen & David M. Crane eds., 2010).

writings such as his Academy Award-winning *On the Waterfront* (Best Story and Screenplay, 1954). His link to us and his notable place in the history of international humanitarian law was that, as an Office of Strategic Services (OSS) officer in World War II and immediately afterward, Budd was, with his brother Stuart, at the center of capturing and assembling powerful, undeniable film evidence of the Nazi rise to power, Nazi concentration camps, and other atrocities – the film evidence that was played before the International Military Tribunal (IMT) at Nuremberg.

Tonight we remember and commemorate five other remarkable people whose lives were parts of the Nuremberg tableau and the connection that links Nuremberg to contemporary international law and justice. Each of the following, recently departed, contributed energy and skill, vision, friendship, and great personal charm to the endeavors that mattered after World War II and that still matter so much, to the world and to each of us.

* * *

The first person to recall, especially here at the Robert H. Jackson Center, was not a lawyer or a member of Justice Jackson's Nuremberg staff. Nancy-Dabney Roosevelt Jackson, who passed away this spring, instead was "only" Jackson's only daughter-in-law. But that meant that during 1945 and 1946, she became a very young "Nuremberg widow" in the sense that her husband, Ensign (later Lieutenant (j.g.)) William Eldred Jackson (United States Navy Reserve), served as his

father's Executive Assistant at Nuremberg and thus left Nancy behind in the United States in the first year of their marriage.

Nancy's marriage to Bill Jackson lasted fifty-five years. They built a strong family, had accomplished careers, and contributed much to their family legacies. But in some ways their long and full lives were shaped fundamentally and permanently by their respective Nuremberg experiences. For the rest of Bill's life following Nuremberg, his work there and his continuing Nuremberg writing and legacy projects were among the things that mattered most to him. In the midst of his work as one of New York City's and the world's leading private lawyers,² Bill Jackson wrote, spoke, and constantly thought about Nuremberg. Nancy Jackson did the same and, especially in her pre-motherhood years immediately after Nuremberg, assisted Bill intensely in his Nuremberg-related research and writing. Bill and Nancy thus both had Nuremberg in their long marriage, and it, along with their love for Justice Jackson and their devotion to his memory, was part of their partnership and family.

I luckily got to know Bill before he passed away and thereafter to know Nancy very well – she became a dear friend and she generously assisted my research and writing on Justice Jackson in countless ways (as her

² See Wolfgang Saxon, *William Jackson Dies at 80; Lawyer with Wide Clientele*, N.Y. TIMES, Dec. 10, 1999, at C19. From 1946 until his death, Bill Jackson practiced law with Milbank, Tweed, Hadley & McCloy, rising to become the firm's managing partner.

children continue to do). Nancy Jackson visited the Robert H. Jackson Center in May 2003 and gave an oral history interview then about her beloved father-in-law.³

As far as I know, Nancy and Bill's September 1944 wedding was the only occasion at which Robert H. Jackson was officially the best man. Across the dozen or so years that Justice Jackson knew Nancy, his regard and affection for her could not have been higher – he adored her and treasured all that she brought to his life and of course to his son's. And he was right.

* * *

We also remember and miss people who were important parts of the United States staff in Europe, including Nuremberg, during the 1945-46 IMT process. One such friend, who in recent years was a spellbinding speaker at Chautauqua Institution and many other venues, was Richard W. Sonnenfeldt. Richard was the chief interpreter – not to be confused with the translators of documents, or with the courtroom interpreters during the IMT proceedings – on the U.S. Prosecution staff at Nuremberg. His service, personally and as the head of a staff that grew to be quite large, was live, out-of-court, German-English interpretation of interrogations of prisoners, prospective defendants, and prospective witnesses before and during the trial.

³ *Nancy Jackson (2003) on Justice Robert H. Jackson*, YOUTUBE (May 2003), www.youtube.com/watch?v=5SPqOfUJ_PA.

Richard Sonnenfeldt was a German Jew, a refugee from Hitler and the Holocaust, a lucky boy whose parents got him to England in 1938 and, through a miraculous saga that he described in his internationally-acclaimed memoir,⁴ made it in 1941 to the United States and obtained U.S. citizenship . . . only to become a U.S. soldier sent back to fight the Nazis. In 1944 and early 1945, he was an infantryman fighting across France and into Germany.

After the Nazi surrender, Private Sonnenfeldt was working in a U.S. Army motor pool when he, possessing native German language skills and the very fluent English of his refugee stops in England, Australia, India, and his immigrant home city of Baltimore, was called out from under a jeep in Austria to serve as an interpreter for Major General William J. Donovan (U.S. Army), head of the OSS. Soon thereafter, Justice Jackson recruited his western New York State friend Bill Donovan to serve as his deputy in the prosecution of Axis war criminals in Europe, which resulted in Donovan's interpreter Sonnenfeldt also joining the Jackson staff.

“Chief Interpreter” Richard always smiled as he explained his lofty title when he was all of twenty-one years old. But in fact he was vital to the work and the

⁴ RICHARD W. SONNENFELDT, MEHR ALS EIN LEBEN: VOM JÜDISCHEN FLÜCHTLINGSJUNGEN ZUM CHEFDOLMETSCHER DER ANKLAGE BEI DEN NÜRNBERGER PROZESSEN (2002); RICHARD W. SONNENFELDT, WITNESS TO NUREMBERG: THE CHIEF AMERICAN INTERPRETER AT THE WAR CRIMES TRIALS (2006).

successes of the Nuremberg prosecutions – he was, for example, Hermann Goering’s preferred (really his personally-demanded) interpreter and functioned, in those sessions and many other interrogations, as a leading interrogator whose language skills and effective personality elicited important admissions and explanations. As the IMT trial year was concluding, Justice Jackson himself suggested that Sonnenfeldt be decorated for his work, and in fact the U.S. Army awarded him the Army Commendation Ribbon.⁵ We lost Richard in October 2009.

* * *

We also lost, in January 2010, Roger W. Barrett, a Chicago lawyer of great distinction.⁶

In summer 1945, the U.S. Army detailed then-Lieutenant Barrett (Judge Advocate General Division) to Justice Jackson’s staff. They worked together closely, in

⁵ See John Q. Barrett, *Richard W. Sonnenfeldt (1923-2009), Chief U.S. Interpreter at Nuremberg and “Single Most Important Person,”* THE JACKSON LIST (2009), www.stjohns.edu/media/3/fbd2e0f2be21484b9abbdce0edb71609.pdf?d=20091030%20Jackson%20List%20Sonnenfeldt.

⁶ See Trevor Jensen, *Roger W. Barrett, 1915-2010: Chicago Lawyer, Army Veteran Who Aided Prosecution of Top Nazis at Nuremberg Trials*, CHI. TRIB., Jan. 10, 2010, available at http://articles.chicagotribune.com/2010-01-10/news/1001090257_1_mr-barrett-nazis-luftwaffe-commander-hermann-goering. For many years, Barrett (no relation) was a partner and leading litigator in the Mayer Brown law firm.

London and then in Nuremberg, where Barrett became the central keeper of, and expert on, the Prosecution's documentary evidence, the backbone of the case. When the trial started late that November, Barrett's courtroom seat, particularly when Jackson was speaking from the podium, was just across the connected table, next to binders of documents, and within Jackson's reach (and he did reach, regularly, for documents that Roger handed up to him).

In early 1946, Jackson, knowing Barrett well and liking him a lot, sent him back to Washington to begin the process of publishing Nuremberg's record. Now-Captain Barrett, working closely with Bill Jackson and others, meticulously assembled and carefully edited the U.S. Government publications that we know as the Nuremberg "Red Series," *Nazi Conspiracy and Aggression*.⁷

⁷ See, e.g., Roger W. Barrett & William E. Jackson, *Preface to 1 OFFICE OF UNITED STATES CHIEF OF COUNSEL FOR PROSECUTION OF AXIS CRIMINALITY, NAZI CONSPIRACY AND AGGRESSION*, at v-xviii (U.S. Gov't Printing Off., 1946) (describing the ongoing Nuremberg trial and the document collection and evaluation process resulting in the publication, jointly agreed to by U.S. and U.K. prosecutors, of approximately 2,200 captured Nazi documents translated into English, including witness affidavits, other statements, explanatory essays, counsel statements, IMT rulings, and relevant treaties), available at http://avalon.law.yale.edu/imt/nca_voll_preface.asp. In addition to these eight volumes, each published in 1946, the "Red Series" concluded with two additional volumes of Nazi documents, "Supplement A" and "Supplement B," which were published in 1947 and 1948, respectively.

Roger Barrett's work first helped to build and then preserved, for global dissemination, the record of Nuremberg. In later years, he spoke of Nuremberg with precision, fervor, and justified pride.⁸

* * *

In April, we lost our dear friend Whitney Harris. He was the last surviving Prosecutor who appeared in a speaking role – a “podium prosecutor” – before the IMT at Nuremberg. At that trial, Lieutenant Commander (United States Navy Reserve) and U.S. Trial Counsel Harris was primarily responsible for the prosecutions of defendant Ernst Kaltenbrunner, former Chief of the *Reichssicherheitshauptamt* (RSHA, or Reich Main Security Office), and defendant organizations RSHA, the *Gestapo*, and the *Sicherheitsdienst* (SD, or Security Service). Whitney Harris also was a principal, trusted aide to Justice Jackson and assisted him throughout the trial, including during his cross-examination of defendant Hermann Goering.

Following Nuremberg, Whitney Harris served successively as Chief of Legal Advice for the U.S. occupation military government in Berlin, as a law professor at Southern Methodist University, as Director of the Hoover Commission on the Organization of the Executive Branch of the Government of the United States, Legal Services & Procedure, as the first

⁸ See, e.g., *Roger Barrett (2008) on Justice Robert H. Jackson at Nuremberg*, YOUTUBE (July 2008), www.youtube.com/watch?v=UBjvhtnwH10.

Executive Director of the American Bar Association, and as General Solicitor at Southwestern Bell Telephone Company in St. Louis. He authored *Tyranny on Trial*, a monumental account of the Nuremberg case and evidence.⁹ He also became a generous philanthropist – Washington University in St. Louis was among the beneficiaries – and a leader and conscience in his community.

In recent years, Whitney Harris devoted his energies primarily to speaking, writing, teaching, and embodying the past, the progress, and the hopeful future of international law and justice. He was a strong supporter of modern tribunals, including the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court. As Whitney knew best and explained powerfully, each of those Tribunals, and the world progress they embody and assist, grew from and builds upon the principles and achievements of Nuremberg.

⁹ WHITNEY R. HARRIS, *TYRANNY ON TRIAL: THE TRIAL OF THE MAJOR GERMAN WAR CRIMINALS AT THE END OF WORLD WAR II AT NUREMBERG, GERMANY, 1945-1946* (1954; reissued 1995; rev. ed. 1999) (with Foreword by Robert G. Storey and Introduction by Robert H. Jackson).

Whitney Harris was a colleague, friend, and special teacher to each of us. He played a key part in making Nuremberg work, in teaching its lessons, in bringing it back to vitality as the 20th century closed, and in handing it up to the future.¹⁰

* * *

We also lost, just in the past two weeks, Benjamin Kaplan. At age 99, Ben Kaplan was the last surviving member of the U.S. legal team before the IMT at Nuremberg.¹¹

In early 1945, Lieutenant Colonel Benjamin Kaplan (U.S. Army) was a War Department lawyer. He was working in Washington for Colonel R. Ammi Cutter (General Staff Corps) and reporting to Assistant

¹⁰ See, e.g., John Q. Barrett, Whitney R. Harris, Henry T. King, Jr., and Benjamin B. Ferencz, *Nuremberg and Genocide: Historical Perspectives*, in PROCEEDINGS OF THE SECOND INTERNATIONAL HUMANITARIAN LAW DIALOGS 9-54 (American Society of International Law, Studies in Transnational Legal Policy No. 40, Elizabeth Andersen & David M. Crane eds., 2009); see also John Q. Barrett, Whitney R. Harris (May 23, 2010) (unpublished eulogy), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729754.

¹¹ See Bruce Weber, *Benjamin Kaplan, 99: Crucial Figure in Nazi Trials*, N.Y. TIMES, Aug. 25, 2010, at B9; Bryan Marquard, *Benjamin Kaplan, 99, Esteemed Jurist, Law Professor*, BOS. GLOBE, Aug. 20, 2010, available at http://articles.boston.com/2010-08-20/bostonglobe/29287479_1_civil-procedure-chief-justice-associat-e-justice.

Secretary of War John J. McCloy. As McCloy and his boss, Secretary of War Henry Stimson, were getting Jackson off the ground there, Kaplan was told that Jackson needed him. And so Kaplan became a senior member of Jackson's original, core team.¹² In summer 1945, Kaplan and Colonel Telford Taylor (General Staff Corps) ran Jackson's Washington operation while he worked in London. After Allied negotiations produced the August 8, 1945 London Agreement that created the IMT, Kaplan and Taylor, along with Sidney Alderman and Allied (principally British) colleagues, wrote the Nuremberg indictment. By all accounts, Benjamin Kaplan was the leading author of Count One, the charge of the defendants' common plan or conspiracy to commit crimes against peace, war crimes, and crimes against humanity. And at Nuremberg that fall, Kaplan was a senior lawyer leading many aspects of the trial preparatory work.

¹² They were, as described on the official roster that the War Department issued on May 24, 1945, a staff of twenty: Justice Jackson; assistants Maj. Gen. Donovan, Sidney Alderman and Francis M. Shea; staff members Col. John H. Amen, Col. Telford Taylor, Col. Murray C. Bernays, Lt. Col. Benjamin Kaplan, Lt. Col. John C. Street, Capt. Ralph L. Morgan, Lt. Gordon E. Dean, Ens. William Jackson, and 2d Lt. Raymond W. Ickes; associates Lt. Col. Warren Farr and Lt. James B. Donovan; and civilian employees Elsie L. Douglas, Ruth M. Sternberg, Betty I. Stark, Anna G. Pill and Eleanor S. Waldo.

Interestingly, Ben Kaplan kept rather quiet about all of that during the rest of his long life.¹³ For him, Nuremberg was a complicated memory. This came through in something that he told me in old age. I asked when he last had seen Nuremberg and he replied, in a soft voice, “December 1945 – I never went back.” He left Nuremberg, in other words, after the trial had begun in November 1945 but long before its summer 1946 conclusion. Jackson wanted Ben Kaplan to go to the podium and present part of the U.S. case to the IMT. But Kaplan had a young wife and a young son in the United States and enough points to be discharged from military service. So he decided to depart. In hindsight, he somewhat regretted that choice. He marveled at Jackson’s risk-taking in accepting the Nuremberg assignment and his vision that it could succeed.¹⁴

Benjamin Kaplan went on to become an esteemed professor at Harvard Law School. He was one of the creators of the Federal Rules of Civil Procedure. He wrote a foundational book on modern copyright law. He became a judge of the Massachusetts Supreme Judicial Court and, after reaching its mandatory retirement age, he served until recently as a judge of the Massachusetts

¹³ Cf. Benjamin Kaplan, *Book Review*, 68 HARV. L. REV. 1092 (1955) (reviewing WHITNEY R. HARRIS, *TYRANNY ON TRIAL* (1954)).

¹⁴ See *Ben Kaplan on Nuremberg* (Boston 1995), YOUTUBE (film from an April 1-2, 1995, conference at Boston College Law School), http://www.youtube.com/watch?v=q-sqQ_p2piE.

Court of Appeals. He was one of the most learned, capable, thoughtful jurists in modern history.¹⁵

Benjamin Kaplan lived to the age of ninety-nine. In his later years, he became physically frail but remained mentally sharp. As he reflected back on his life and accomplishments, he very rightly felt proud to have played front-end roles in the Allies getting to, and in their ultimately succeeding at, Nuremberg.¹⁶

We stand on the shoulders of these greats. We were lucky to be their friends. We remember them with deep affection.

¹⁵ See generally *In Memoriam: Benjamin Kaplan*, 124 HARV. L. REV. 1345 (2011) (essays by Justice Stephen G. Breyer, Justice Raya Dreben, Justice Ruth Bader Ginsburg, Marjorie Heins, Arthur R. Miller, Martha Minow, and Lloyd L. Weinreb).

¹⁶ See generally John Q. Barrett, *Benjamin Kaplan (1911-2010), Nuremberg Architect & Prosecutor*, THE JACKSON LIST (2010), available at www.stjohns.edu/media/3/b7b43b16285b47a5b5ed7b6bbfa5704a.pdf?d=20100822.

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