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Transcribed Remarks from the Loyola Law School Los Angeles Nuremberg Symposium

Rolf Treu

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Transcribed Remarks from Loyola Law School, Los Angeles, Nuremberg Symposium

THE HONORABLE ROLF M. TREU

1968 was one of the proudest days of my life: the day I was naturalized as an American citizen. I am a child of Germany. I was born in Bremen two years and one week after Hermann Goering bit down on his cyanide capsule, and after Frick and Frank, Kaltenbrunner and Keitel, Saukel, Seyss Inquart and Streicher, Rosenberg and Rippentropp, and Jodl met their ends at the end of a rope in the gymnasium of their Nuremberg prison.

A judge is a product of his or her own life history and experiences. It would not be realistic to assume that given the same facts and law, the result of any two cases being tried to different judges would be the same. Were it to indeed be so, our positions could be in jeopardy of being quickly lost to computers. So background, experience and philosophy of life and law arising therefrom are what makes diversity so important. Permit me to share with you my background and why the Nuremberg trials have been so important in forming my judicial philosophy.

I was born to a long line of Baltic Germans. My ancestors had been Lutheran pastors in Latvia for several generations. They ministered to both the German and Latvian members of their congregations. During those years, Latvia was part of the Russian Empire. With the fall of Imperial Russia, the communists in 1918 and 1919 tried to gain control of Latvia, but ultimately failed. However, during the attempt, my great uncle Paul Treu and his cousin Ernst Treu, both pastors were summarily hauled out of their churches, imprisoned and executed by the Bolsheviks. My grandfather, Carl, also a pastor, was arrested and sent to the gulag, where he contracted typhus and died. My father, Raimund, fifteen-years-old at the time was arrested, spent a night in Soviet detention not knowing what his fate was to be, and released the following day.

Skip forward to the Nazi period in Germany, 1933 through 1945. When the war broke out in 1939, my father was working as a businessman in the Gold Coast in Africa, currently Ghana. The Gold Coast at

the time was a British colony and as a military-aged German, albeit civilian, my father was arrested by the British, sent to a civilian POW camp in Canada, and spent the entire war years there. One might consider him lucky. He had avoided Bolshevik imprisonment or worse, escaped being conscripted into the German armed forces in WWII, and was returned to Germany after the war to get on with his life. Other members of my family however were not as fortunate. I had a great aunt die in Hannover as a result of allied bombing, and my father's brother, a 6th Army Russian language interpreter at Stalingrad, was one of the many who did not survive Soviet imprisonment, dying of starvation.

My parents decided to leave Germany for better opportunities in the new world and we emigrated to Canada in 1953, and to Los Angeles in 1960.

So as a result of extremism on the left by the Bolsheviks, and on the right by the Nazis, I lost members of my family with no judicial redress available. Which brings me to Nuremberg.

When I think of Nuremberg as a concept, I think of all those thousands and perhaps even tens of thousands of Germans who did not face arraignment and trial for their war-time crimes. We have seen the pictures: the soldier standing with his pistol pointed at the back of the head of the kneeling man who is poised to fall into the chasm before him when the shot is fired; the naked women running into the gully where they are to lie on top of the already dead to be shot; these individual or group perpetrators were not identified or tried. As a German, any conscientious citizen must consider; could a relative of mine been involved in this barbarism? What associative, collective, or moral guilt do I bear? What can I do to atone for this eternal shame?

The defendants at Nuremberg who were found guilty—recall three were acquitted—atoned with their lives or prison time. Germany itself has paid billions upon billions in reparations and has excellent relations with Israel. But what about us individuals who were born in Germany after the war? I chose to work in the law, because in it, applied properly, the rights of all are protected.

During his rule, Hitler had arrogated unto himself legal supremacy in Germany. He was considered the supreme judge of the country, and, indeed, could and did inject himself into any case he wanted to ensure the outcome he wanted to achieve. His quote: "From now on, I shall intervene in these cases and remove from office those judges who evidently do not understand the demand of the hour."

That desired outcome was virtually always to the defendant's det-

riment, as the sentence was ordered increased by Hitler. In one instance, Edward Schlitt had been sentenced to a prison term and, as a result, Hitler made a call protesting the sentence. In response, an official wrote him the following:

I entirely agree with your demand, my Fuehrer, for very severe punishment for crime, and I assure you that the judges honestly wish to comply with your demand. Constant instructions in order to strengthen them in this intention, and the increase of threats of legal punishment, have resulted in a considerable decrease of the number of sentences to which objections have been made. I shall continue to try to reduce this number still more, and if necessary, I shall not shrink from personal measures, as before. In the criminal case against the building technician Ewald Schlitt from Wilhelmshaven, I have applied through the Public Prosecutor for an extraordinary plea for nullification against the sentence, at the Special Senate of the Reich Court. I will inform you of the verdict of the Special Senate immediately it has been given.

Hitler thereafter was informed that the ten-year sentence against Schlitt was “quashed within ten days and that Schlitt was sentenced to death and executed at once.”

In another matter, a two-year sentence in a racially tinged case was elevated to capital status and the defendant was executed. The irony was that the ultimate judge was not available for appeal by normal legal process, but picked and chose those cases he wanted to intervene in. No doubt, close associates and influential party members could have his ear in cases that concerned them, but the ordinary citizen was shut out of this process. Hitler himself of course was immune to legal process, as were those of his high level circle that he deemed to be so. Another quote:

Whenever someone reproaches me with not having used ordinary courts for their sentencing, I can only say: “In this hour I am responsible for the fate of the German nation and hence the supreme law lord of the German people.”

Which is what makes Nuremberg so important. The International Military Tribunal was no respecter of status, but rather let the relevant chips fall where they may based on facts and law. The defendants were stripped of medals, indicia of rank and privilege, had no more, but as important, no less rights in the trial than due process required. This was a radical change from Nazi legal procedure.

But of utmost importance to me was the concept clearly displayed of the independence of the judges. While the Russian jurists undoubtedly were coached from the Moscow sidelines, and the Soviet Judge

Nicketchenko was quoted as saying before the trial even commenced: "We are dealing here with the chief war criminals who have already been convicted and whose conviction has been already announced by both the Moscow and Crimea [Yalta] declarations by the heads of the [Allied] governments The whole idea is to secure quick and just punishment for the crime," the Court as a whole considered evidence and rendered judgement independently. Recall, a verdict required only three of the four possible votes.

The first thing dictators of the left and right abolish after seizure of power is the independence of the judiciary and press. None of this, "every man is subject to the rule of law" for them. No supreme court telling them to turn over incriminating tapes, resulting in resignation of the head of state. The democratic countries of the world have evolved into states honoring the rule of law and the independence of the judiciary.

I carry my background into my profession with the unshakable conviction that the Courtroom is the temple of justice, whose independence must never again be jeopardized.