

Eyewitness Accounts

By Clifford G. Gately

Local Attorneys Recall Tribunal Experiences



Ensign Nicholas Manos (right), whose story appears on page 52, with Captain Harold K. Latta, outside the Palais Du Justis in May 1946

Sixty years ago, the Nazi war atrocities were laid bare for the world to see at the Nuremberg Trials, and two Chicago-area attorneys were present during the trials as members of chief U.S. prosecutor Robert Jackson's prosecution team. Roger Barrett, senior counsel at Mayer, Brown, Rowe & Maw, and Bernard Meltzer, University of Chicago Law School Professor Emeritus, both helped shape the case against the Nazi defendants. They worked tirelessly on gathering and presenting key evidence for various aspects of the trials. They witnessed historical moments of the proceedings, interviewed defendants, and were privy to events that took place both in and out of the courtroom. In wide-ranging interviews conducted by CBA President Michael Hyman, both men spoke of the trial—the defendants, the judges, other prosecutors, and the evidence and ideologies that were put forth. What follows is a short sampling of those interviews...

Roger Barrett

In the summer of 1945, Roger Barrett went to London with Robert Jackson to work alongside British Intelligence (MI-5) to collect documents for the trials from all over Europe. He was instrumental in finding, authenticating, and classifying the 100,000 documents that were amassed during this period and in determining the 3,000 documents that were eventually used as evidence at the trials. In London, prior to the trials, Barrett was present during some of the daily discussions that took place among Jackson, Major General William J. Donovan and their counterparts from the other allied countries.

"They had differing ideas of what the trials should be. The Russians wanted to just shoot them [the Nazi defendants], and the British wanted military court marshals. Justice Jackson was interested in setting up a trial that gave rights [to the defendants] in the American style and a trial that would be convincing, so there would never be a dispute as to what actually happened."

Barrett described the Nazis as very "methodical," saying that "they kept records of everything." At one point in the interview, he described the "Death Books," concentration camp records that were used at trial.

"The Germans kept documents of everything. One of the most dramatic documents I saw were the 'Death Books,' records of every person's name, how they died, when they died, in alphabetical order by hour. During one hour the 'A's' would start dying of 'heart failure.' They would all die in two-minute intervals, with the same cause of death listed. Then the next hour, further down in the alphabet, people would start dying of something else. Even that record was saved, even though it was a phony document."

"I had one document. I wish I had kept it, it was from Hermann Goering [Nazi Reichsmarschall and Chief of the Air Force] to someone. Goering had written at the bottom of the document, 'After you have read this, be sure and destroy it because that Jew Roosevelt will try me as a war criminal.'"

Barrett ended up spending several hours with Hermann Goering going over documents. Rarely was a document contested. Barrett described Goering as:

"The typical Nazi—completely dedicated, completely proud of what he did, believed firmly in everything he believed in, and not ashamed of anything he did. He blamed most of [the] world's evils on the Jews."

Barrett also described Goering as:

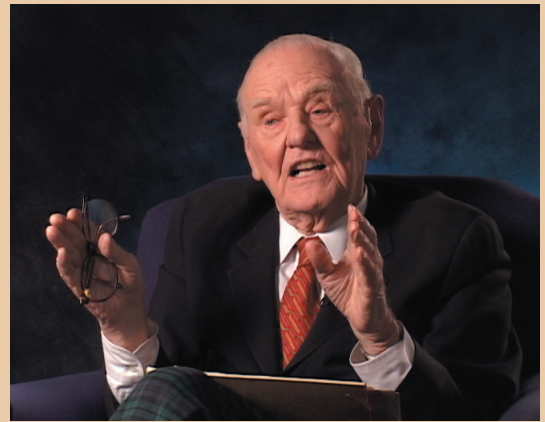
"... arrogant, brilliant, witty, and completely amoral."

During the interview, Goering chastised Barrett for his informal manner of questioning:

"He said to me, 'Captain, this isn't the way you should handle this. We almost won the war, and we would have if we didn't turn against Russia. And, if we won the war, you would be standing at attention wearing a prisoner's uniform and there would be two SS officers sticking you with bayonets and you'd be saying, 'Yes, General Goering. No, General Goering.' That's the way you should treat me.'"

Goering spoke to Barrett one other time during the trials. Barrett had introduced a transcript of conversations between the German Air Ministry's office and Arthur Seyss-Inquart, a Nazi commissar stationed in Austria before the occupation. Goering appeared in the transcripts, asking about Communist activity in Austria, looking for a pretext for the Germans to march in and "save" the country. Seyss-Inquart responded that things were "quite peaceful." Goering then said, "Well you should rectify that situation," and gave instructions on how to build up the insurrection with activities like burning churches and inciting riots, all of which paved the way for the German invasion. After the transcripts were entered into evidence, and as Goering was being led out of the courtroom, Goering said to Barrett:

"Captain, you introduced that document as being the Air Ministry conversation with Seyss-Inquart. It wasn't the Air Ministry—it was Goering. I used the facilities, but it was all mine. Would you please correct the record to show that."



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One aspect of the trials that has received a great deal of attention from scholars and lawyers is Jackson's cross examination of Goering, after Goering had taken the stand in his own defense. Jackson was criticized for asking broad questions, allowing Goering to use his answers to grandstand with Nazi propaganda. When Hyman asked Barrett about this point in the trials, Barrett responded:

"I traveled with Jackson over the Christmas holiday, and I heard him dictating to his secretary. He was the most eloquent man I have ever heard, and his opening statement was the most brilliant piece of advocacy I have ever heard.... He had a bad day with Goering. Jackson started by trying to hit home runs instead of singles. Goering knew the subject matter better than Jackson, and I think Jackson underestimated his brilliance. When Jackson tried to rein him in, Biddle [the American judge] overruled Jackson's objections and said, 'Your question is broad enough so Goering is entitled to give this kind of answer.' Then Goering would take off. This happened several times. Jackson forgot some of the basic elements of trial advocacy. He may have been away from it for too long and in a position of too much authority."

Hyman closed the interview by asking Barrett whether he thought Nuremberg was a success. Barrett answered:

"As far as creating a record so people believed what really happened, it was a tremendous success."

Hyman then asked what Barrett would say in response to people who deny that the Holocaust ever happened.

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Bernard Meltzer

Bernard Meltzer was originally assigned to the economics case, which consisted of three parts: 1) the trial of financiers who had financed the German armament; 2) the trial of other high officials who were responsible for slave labor; and 3) the trial of those responsible for pillaging and plunder in the east. Meltzer prepared the case against Walther Funk, who succeeded Hjalmar Schacht as the German Minister of Economics and President of the Reichsbank. Later, Meltzer was also asked to take on the concentration camp case.

"We had 10 days to prepare that case, a case which was a symbol of the Nazi regime. It was the only part of the case, as I understood, that had been assigned to the JAG. I think the JAG lawyers who were assigned the concentration camp case had their circuits overworked. So they had an enormous range of documents, but they had not shaped them into an argument or trial brief, and the people in charge learned that late in the game. And so we were asked to engage in a sort of rescue mission. My colleagues who spoke German fired things up to me, and I wrote as quickly as I could and slept as little as I could."

Similar to Barrett, Meltzer commented on the Nazis' propensity for record keeping, saying,

"I was most interested with the German predisposition to write things down. For them it was more important to worry about making the record than what was contained in the record."

Meltzer pointed out that Jackson's general strategy was to use the voluminous and detailed documents to prove the case as opposed to using testimony.

"Although the press found the documents-case tedious, it made its point.... The materials relating to the concentration camp case were a lawyer's dream but a humanist's nightmare."

On the general appearance of the Nazi defendants at trial, Meltzer said:

"The first time when you saw them without their uniforms, their medals, and their insignias of power, it was hard to believe that they had devastated a good part of the world and had created fear and loathing in much of the rest of the world. But then you came to

understand the kind of antics you might expect of Goering, who assumed the mantle of leadership, and who was declaring to the world that he was in Hitler's shoes, and he was the leader of the band."

Meltzer described Goering as: "...nimble and smart. He understood the direction of the questioning and was in control of strong intellectual power." Meltzer said that Goering, who poisoned himself hours before his death sentence could be carried out, was defiant to the end.

"The men who were in the military said, 'if you want to shoot us' that's one thing, but hanging is beneath us. Taking the poison pill was really his [Goering's] last act of defiance. He was saying, 'I am avoiding the details of the sentence. I will die by my own hand.'"

Meltzer helped build the case against German Minister of Economics and President of the Reichsbank, Walther Funk, who was spared the death penalty. On the Funk case, Meltzer said:

"Funk worked for Goebbels [Hitler's propaganda minister] in the propaganda area and was involved in determining the number of slave laborers that could be used in Germany. When Funk became the president of the Reichsbank, it became the storehouse for eyeglasses, rings, gold fillings, and other things of value that had been stripped from the corpses, [things] that presumably had a market or military value. Funk said he knew nothing about it, a notion which the Tribunal rejected. When the evidence against him was announced, he wept. As I've said before about Funk, his apparent weakness as a man helped him as a defendant. He was overshadowed by Goering, and that may have resulted in him getting [a lighter sentence]. However, a sense of guilt is no substitute for rectitude."

On Jackson, Meltzer was praiseworthy of his opening statement.

"I thought it was a great statement. It showed what a great capacity he had to understand the case and present it in terms that were both eloquent and clear and intelligible to the everyman."

Meltzer also indicated that he had expected Jackson to do better on his cross examination of Goering. In discussing the many lessons learned from Nuremberg, Meltzer said:

"Beware of defendants seeking control of a trial to use it for their own purposes," which rings as true today as it did 60 years ago.

During the interview, Hyman asked Meltzer to comment on the other countries' trial teams. Meltzer said that the British were very good, that the French were not as adept at cross examination because the lawyers don't engage in it as much in their judicial system, and, in regard to the Russians, Meltzer said, "The Russians were really on their own. You could not get close to them." He discussed a situation in which the Russians wanted to try the Nazis for the massacre of 10,000 Polish officers. The U.S. team wouldn't back the effort because the Americans suspected that the Russians themselves were responsible for the massacre. Meltzer also offered two anecdotes to emphasize the Russians' posture during the trials. The first concerned an attractive Russian woman who was part of the prosecution team. At a big dance she was observed enjoying one dance too many, from the Russians' perspective, with an English officer. "Two days later she was back in Moscow," said Meltzer. He also said that the Russians' notorious unwillingness to share information became the source of a joke that Jackson made on the occasion of his birthday when he received a watch from the enlisted men:

"Someone from the room yelled to Jackson that they got the watch from the Russians. Without missing a beat, Jackson said, 'That's fine, that's really fine. Because up until now I couldn't get the time of day from them.'" ■



A group of emaciated survivors sit outside a barracks in the newly liberated Dachau concentration camp. USHMM, courtesy of Kathleen Quinn.

Clifford G. Gately is a marketing manager with Jenner & Block LLP and has been a member of the CBA Record Editorial Board since 1994.