HOLOCAUST MEMORIAL DAY TRUST

80th Anniversary Event for the Nuremberg Trials

Inner Temple, 19th November 2025

1. Any museum or book or film about the Holocaust has to struggle to get across to the audience two things. The first is the enormity of the scale of the murder and brutality that took place during the Shoah and the second is that each person murdered, each person uprooted and made homeless and each person who was the victim of persecution and oppression is an individual – a person like you and me with their own hopes and dreams and sensibilities.
2. The best of those museums or films or books manage to achieve that. I am thinking for example of *Schindler's List* which was a groundbreaking film for its time. The director, Steven Spielberg, managed to convey the industrial scale of the Holocaust. Yet the image that stayed with a lot of people after they had seen the film was the single splash of colour - that little girl in her bright red coat in the street in an otherwise black and white movie.
3. With books, I think two that stand out to me are Philippe Sands' *East West Street* and Edmund de Waal's *The Hare With Amber Eyes*.[1] Both books weave intensely personal family stories into the sweep of history – the destruction of a culture and the widespread looting of property exemplified in the collection of netsuke including the hare. Shortly after the de Waal book came out, I attended a talk he gave as part of Jewish Book Week. He went up to the lectern and just before he started his remarks he nonchalantly took something out of his pocket and put it down gently on the front of the lectern. It was the little hare itself. There was a gasp across the audience. It is that kind of tiny object and tiny moment that links us and our personal histories to historical events that are of a scale that our minds cannot really grasp.
4. Sir Hartley Shawcross in his astonishing closing speech in the final days of the Nuremberg Trial in July 1946 was also very determined to focus on both those aspects of the Holocaust and I think he certainly did achieve this in the most moving and extraordinary way.
5. Five years ago at the 75th anniversary of the Trials, there were a number of events at Gray's Inn on the subject of the Trials since Sir Hartley Shawcross was a member of Gray's Inn. It was during one of those events, which took place online because of ongoing Covid

[1] East West Street: On the Origins of Genocide and Crimes Against Humanity by Phillips Sands QC (2016) Weidenfeld & Nicholson and The Hair With Amber Eyes by Edmund de Waal (2011) Vintage.

restrictions, that I first saw clips from the recording of Sir Hartley's closing submissions. What struck me was how he synthesized the huge scale of brutality committed and overseen by the defendants in the dock and the human scale of the tragedy of individual people.

6. At one point in his long speech Sir Hartley describes the evidence given by the German Engineer Erich Grabe of the mass murder of Jews in Doubno in Ukraine. The Jews were corralled together, forced to strip off their clothes and wait with their loved ones until they were called forward in family groups and shot at a mass grave already full of dead and dying people. Sir Hartley recounts in particular Grabe's description of one family, a man and woman with their three little children, two grown up daughters and an old woman with snow white hair cradling the baby. He describes how the father stood waiting with his 10 year old son and pointed to the sky and then bent down and seemed to explain something to his boy.

7. If you have not already watched this I really commend the last 15 or so minutes. He refers of course to the scale of the crimes of which the defendants were accused – 12 million men women and children murdered in cold blood. Millions upon millions more who mourn their families. But the very final sentence of his speech refers back to the evidence of the murders at Doubno with the father pointing to the sky and seeming to say something to his boy. And then he bows and closes his speech and leaves the lectern.

8. So how does this relate to the work of judges in more normal times? I think it is quite easy to get caught up in the grand scale of what we do as judges – though of course I am not attempting to compare anything that I do in my work with what went on at Nuremberg.

9. But I can certainly say this. That when I started out as a judge in the Chancery Division and began presiding over trials, I was struck by how much human drama there was even in a case that appeared on reading the judgment printed in the law reports to be a rather dry discussion of the proper interpretation of some obscure section of the Companies Act or the Insolvency Act. What became apparent to me is that the case is not actually about that at all. It is about a group of people who for whatever reason feel anger and grievance against each other and all that is played out in the course of the trial. So although there is always a clear winner and a clear loser at the end of the day, if the trial process works as it is supposed to then both the winners and the losers can come away feeling that justice has been done.

10. And I am not the first person to regard that as part of the goal of the judicial process. In the Book of Exodus (Ch 18 vs 13 – 26) Jethro recommends to Moses that he set up different levels of judiciary rather than attempting to hear all the disputes himself. Jethro tells him, if you do this, you will be able to bear up and all these people will go home in peace. The rabbinic commentary has focused on Jethro's statement that **all these people** will go home in peace – not only those who win but also those who lose.

11. That is because the importance of trial process is not just getting at the result in the final judgment. It is about the fairness and thoroughness of the process and how that affects all the people who are involved. As a judge, I try to remember that however interesting and important the case is from a legal point of view or however much money there is involved what really matters is the people sitting behind the barristers – the clients for whom this is usually a unique and stressful experience in their lives. By the time the case gets to the Supreme Court the clients will have a lot of emotion and money invested in the outcome. So it is important on the Bench to look up from the computer screen and the papers and look past the barristers and see the people for whom this is a final chance to vindicate the wrong that they think has been done to them.

12. Another other point that comes across from the Nuremberg trial is the importance of individual responsibility for your actions. This was discussed in a Birkenhead Lecture given by the late Lord Etherton in October 2018.[2] He discussed the reaction of German judges who enthusiastically enforced the draconian and unjust laws and who were never really held accountable for their actions. There were 12 further trials held at Nuremberg after the trial of the 24 Nazi leaders called the Justice Trial or the Judges' trial.[3] That was the trial that was the subject of the 1961 film *Judgment at Nuremberg* although the characters in the film were fictional characters based on the real people. In that trial the Military Tribunal prosecuted 16 Nazi officials including judges and justice ministry officials for the crimes of judicial murder and other atrocities, which they committed by destroying law and justice in Germany. Lord Etherton said that there is only one documented case of resistance by a judge to the system in the course of carrying out his judicial professional duties. The overwhelming majority of German judges share responsibility for the terror of the regime.

13. At the end of the lecture, Lord Etherton goes on to consider whether British judges would have fared any better in similar circumstances. If the people of this country actually faced the kind of discriminatory and oppressive laws brought into force by the Nazis in and after 1933, Lord Etherton says it is difficult to be prescriptive about the course that might be taken by the judiciary. Judges are the guardians of the constitution. Every judge takes the judicial oath on being sworn in to office in which we swear "to do right to all manner of people after the laws and usages of this realm without fear or favour, affection or ill will". Lord Etherton says "judges here ride on the shoulders of countless generations of judges who have gone before them restraining unbridled exercise of executive power protecting the liberty and rights of the individual." His conclusion is that the common law might be deployed to defeat a tyrannical

[2] *The Road to Tyranny - the Continuing Legal Legacy and Lessons of Nazi Germany* The Eleventh Birkenhead Lecture given in Gray's Inn Hall by Master Sir Terence Etherton, Master of the Rolls on 30 October 2018.
[3] *The United States of America vs. Josef Altstötter, et al.,* or Case 3 of the Subsequent Nuremberg Trials.

regime which enacts laws following the correct procedures but with abhorrent effect and purpose.

14. I think every judge asks themselves the question – what would I have done – how brave would I have been?

15. That brings me to my final point which is what was the point of the Nuremberg trials. This is not a question of whether the trials were "victor's revenge" rather than real justice. Rather what was the point given that at the trial there cannot have been any doubt of the verdict of at least some of the defendants. Three were acquitted but some of them – Goering, Hess, von Ribbentrop and Keitel for example were clearly going to be convicted of the most heinous crimes. Some may have been more guilty than others but as Sir Hartley put it himself in his closing speech, it is no mitigation for some of the defendants to say they were less directly involved or did not play such an active part. "What does it matter" he said, "if some defendants forfeited their lives only 1000 times and others deserve a million deaths?"

16. The point is to create a record – to bear witness for the future. And we have already seen the importance of what happened at Nuremberg. On example is the trial in 1996 of *Irving v Penguin Books and Deborah Lipstadt*[4] concerned the libel action brought by the so-called historian David Irving against Penguin Books for an alleged libel in Deborah Lipstadt's book *Denying the Holocaust – The Growing Assault on Truth and Memory*. Irving complained that passages in the book accused him of being a Nazi apologist who had distorted the facts and manipulated documents in support of his contention that the Holocaust did not take place.

17. There are a couple of books written about this legal case. One by D D Guttenplan called *The Holocaust on Trial* discusses the progress of the litigation and the personalities involved.[5] One point he discusses is the decision that the defendants made not to call any survivors of Auschwitz to give evidence in the trial. There were survivors who were able and willing to testify but there were a number of reasons why the solicitor acting for Ms Lipstadt, Anthony Julius, decided not to call them. One reason was the moral reason of not exposing them to cross examination by David Irving who represented himself at the hearing and so would have cross-examined them. Another reason was that it might be easy to confuse the witnesses.

18. But a further reason was that Deborah Lipstadt wanted the case to be won the right way, convincingly, on the evidence. In a few years' time they realized there would not be any survivors left nor any perpetrators either. Survivors' testimony would have made *Irving v Lipstadt* the last trial of its kind – a trial with evidence of survivors. Instead, it is the first of a new generation: a trial about the Holocaust in history instead of a trial about the Holocaust.

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[4] *Irving v Penguin Books and Deborah Lipstadt* [2000] EWHC 115 (QB) (11 April 2000).
[5] *The Holocaust on Trial: History, Justice and the David Irving Libel Case* D D Guttenplan (2002) Granta Books.

19. The judge, Mr Justice Gray, in his very long and detailed judgment, concluded that the charges made in the book were substantially true, including the charges that Irving had for his own ideological reasons persistently and deliberately misrepresented and manipulated historical evidence. The judgment refers at various places to the evidence given by witnesses at the International Military Tribunal at Nuremberg. These included Rudolf Hoss the Auschwitz Kommandant. He also referred to the witnesses at the trial of Eichmann.

20. It so happened that I was in Berlin a few days after the judgment in *Irving v Penguin Books* was handed down. I went on a trip organized by my synagogue, the Liberal Jewish Synagogue in St John's Wood. Several of the groups of people there we talked to when we spent time with the Jewish community there told us how important the trial and how anxiously they awaited the result. The thorough and emphatic judgment of Mr Justice Gray was extremely important to them, not just to the Jewish community but to the whole of Germany.

21. So 80 years ago at Nuremberg was the start of the process of finding and recording what actually happened – and that is a key aspect of any judicial process.