

Features

A Long-Forgotten Film on the Nuremberg Trials Helps Rekindle Interest in the Holocaust

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By [Terry Carter](#)



Photo courtesy of NARA

Associate Justice Robert H. Jackson was cussing mad when he wrote a letter to Secretary of the Army Kenneth Royall on Oct. 21, 1948. And it had nothing to do with the business of the Supreme Court. In two single-spaced pages, Jackson was detailing why the Army should OK the U.S. release of a documentary film it had made about the first Nuremberg trial, where Jackson had served as lead prosecutor. He had learned that the government denied the New York City Bar Association's request to show the film.

Jackson described to Royall a profanity-laden letter he'd already sent to the city bar's president, Harrison Tweed, decrying what he saw as a bone-headed decision. He said Tweed had asked whether the letter could be read to the group—minus the profanity.

"I told him he could read it if he would not cut out the profanity," Jackson wrote Royall, underlining his displeasure. The film, *Nuremberg: Its Lesson for Today*, detailed the Nazi rise to power and the systematic atrocities committed by the regime. Jackson urged the Army to release the film, not only to the New York bar group but also "for showing by private enterprisers who might desire to exhibit it."

Jackson's interest in the film was obvious: He had taken leave from the Supreme Court in 1945-46 to head the American prosecution team at Nuremberg and became the architect of the international trial process. It was the first trial of its kind, levying justice rather than victors' raw vengeance for 21 of the most important Nazi leaders. Still, his request was unavailing. Doing so, Roy all responded, would be "contrary to present policies and aims of the government."

What Royall was saying was that Cold War exigencies had changed everything: A vanquished Germany was now an ally; the Soviet Union, once an ally, was now an antagonist. And the film rubbed against that new reality.

Jackson died in 1954. And although the film was widely screened in Germany in 1948 and 1949—to ensure the German public would know exactly what had happened under Nazi rule—it would languish in dusty vaults and movie

canisters for decades, going virtually unseen in the U.S.

Bringing the film's title to full irony, the New York bar group did see a version of it—a self-serving propaganda vehicle hurriedly created by the Soviets. Developed from stock trial footage and related films, it depicted the USSR as bringing the Nazi regime to justice in the course of single-handedly restoring world order.

But now, finally, *Nuremberg: Its Lesson for Today* can be viewed by Americans. The film has been meticulously restored by the late director Stuart Schulberg's daughter, Sandra Schulberg, along with documentarian Josh Waletzky. They worked with an original copy provided by Germany's official archives, and the new release is now showing worldwide.

Not only has the film received critical and popular acclaim, it has become the focal point of a re-emerging interest in the Holocaust and the role played by lawyers and judges within the Nazi regime's highly codified machinery of death. From hugely popular CLE programs created by the U.S. Holocaust Museum to a newly created course at the U.S. Military Academy at West Point aimed at promoting the rule of law, the Holocaust is instructing a new generation on the horrific outcomes that result when laws and legal systems become untethered from basic moral forces.

JACKSON WAS INVOLVED IN THE FILM FROM ITS INCEPTION. When U.S. military officials in postwar Berlin tried to control the script, he intervened to ensure a big-picture, historical approach—the same view he advocated during the Nuremberg prosecution. He wanted the trial and its explication of Nazi aggression to stand as a lesson for all time.

Among those tasked with documenting the atrocities were brothers Stuart and Budd Schulberg, both writers and filmmakers on the rise. Their boss was Navy captain John Ford, the legendary Hollywood director.

Stuart Schulberg later would become NBC television's senior documentary producer until his death in 1979. He wrote and directed the *Nuremberg* film as a Marine sergeant working in the Office of Strategic Services, a predecessor of the CIA.

His brother Budd, a Navy lieutenant who went on to win an Academy Award for writing *On the Waterfront*, supervised editing of two other documentaries used as evidence in the trial: *The Nazi Plan* and *Nazi Concentration Camps*. Segments of Budd Schulberg's documentaries are embedded within the *Nuremberg* film, illustrating much of the basis of the four-count indictment: conspiracy to wage aggressive war, crimes against peace, war crimes, and crimes against humanity.

But it was Jackson who helped direct the director, guiding him toward the grander struggle between the evil formalism of Nazi-era laws and legal procedures, and basic human rights.

"Jackson became the film's frustrated stepfather, uncle, supporter and participant," says John Q. Barrett, a professor at St. John's University School of Law in Queens, N.Y. An expert on the Nuremberg trials, he now is working on a biography of Justice Jackson. (Barrett provided Jackson's correspondence with Royall for this story.)

The second sentence of Jackson's eloquent opening statement at the first Nuremberg trial encapsulates his passion and reasoning: "The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."

The film is a concise, readily grasped evidentiary primer on the rise and reign of the Nazis, as well as a cinematic record of what was arguably the only true "trial of the century."

Sandra Schulberg—a producer whose credits include 1987's *Waiting for the Moon*, a well-received movie about Alice B. Toklas and Gertrude Stein—was born two years after the Nuremberg film's completion. She didn't see it until 2004, when she was preparing an exhibit of films about U.S. efforts in the Marshall Plan to rebuild Europe after World War II.

Nuremberg moves at a compellingly clipped pace with a newsreel-noir style and is now, in the restored version,



Marine Corps Sgt. Stuart Schulberg—writer and director of *Nuremberg: Its Lesson for Today*. Photo courtesy of Schulberg family archive.

narrated by Liev Schreiber—an actor whose voice is probably better known than his face, thanks to his many voiceovers in HBO and PBS specials.

The restored version offers a number of important tweaks and flourishes. For example, in the original the Nazi defendants are seen in the dock but not heard, with a narrator sometimes reconstructing their testimony. Through careful synchronization of original sound recordings with the trial's film footage, we now hear the rationalizations of the Nazi leaders in their own voices—with subtitles.

Even in black and white, the restored film has a newness and freshness for those who have grown up in a time of multichannel, multimedia, self-created learning and news sourcing. They may or may not have learned details of Hitler's Third Reich or seen the stark, searing filmed evidence of the atrocities it wrought.

The film was an eye-opener for many of the 500 cadets who came to a screening of *Nuremberg* last April at West Point, prior to the U.S. theatrical release last fall in New York City and Washington, D.C.

"Some of them had no idea of some of the details of how [the Holocaust] came about and the extent of the atrocities," says Col. Maritza Ryan, head of West Point's Law Department, which has 20 professors, all of them lawyers. "They said it was difficult for them to watch but important for them to see."

The film has gained unexpected traction and buzz. That surprised and pleased some who are working to advance the Nuremberg Principles adopted in 1950 by the International Law Commission of the United Nations. The principles have influenced both the creation of the International Criminal Court and the procedures adopted by various war crimes tribunals in recent years.

"We are all astonished at the attention and huge reaction [Sandra Schulberg] is getting from so many places with this film," says Raye Farr, director of the Steven Spielberg Film and Video Archive at the United States Holocaust Memorial Museum in Washington, D.C.

"What people don't know and what you don't see in the film is the tremendous investment Sandra's father and [Justice] Jackson and everybody had in this, thinking they would educate the world," she says. "They thought this was the most important documentary of the 20th century. It didn't turn out that way. But maybe it'll be one of the most important of the 21st if it lays down some vision of war crimes prosecution and holding individuals responsible for their actions."



German moviegoers leave the Kamera movie theater in Stuttgart in November 1948 after viewing *Nuremberg*. Photo courtesy of Schulberg family archive.

FOR A VARIETY OF REASONS, SOME MORE OBVIOUS THAN OTHERS, this story of the rise of the Nazis has struck a chord. Renewed relevance seems to be the film's strength.

First and foremost, the Nuremberg Principles hold that individuals and leaders, including heads of nation-states, are no longer immune for atrocities committed on behalf of their government. The Ad Hoc Criminal Tribunals for the Former Yugoslavia and Rwanda were the first bodies created to try individuals for war crimes since Nuremberg, and their semblance of success was a direct factor in the creation of the International Criminal Court.

Moreover, the world is dealing increasingly with the unchecked, brutal fervor of historic tribal rivalries, religious animosities and routine political violence. Too often the result has been genocide, rape, and the slaughter of women and children.

"The *Nuremberg* film had lessons for the day in 1948 but now has lessons for the year 2011 and beyond, which is that for great crimes, justice must be done," says Stephen J. Rapp, the U.S. ambassador-at-large for war crimes issues, who spoke at West Point when the film was screened there.

"In civil wars like those in Sierra Leone and Rwanda, there is more danger now in being a woman or innocent child than being a soldier," says Rapp, who previously was chief prosecutor at the Special Court for Sierra Leone and before that chief of prosecutions at the International Criminal Tribunal for Rwanda.

Nuremberg is especially resonant for legal professionals, some of whom have invoked the Nuremberg Principles in their protests against the Justice

Department's secret approval of expanded presidential powers after the 9/11 terrorist attacks.

Part of that debate began with the military. In the early 2000s, West Point cadets were asking their professors in the Law Department about the legal grounds for U.S. treatment of detainees suspected of being terrorists, including the controversial issues of aggressive interrogation, particularly waterboarding. The answers, in effect, would seem a reversal of roles: the military calling out civilians for their aggressive tactics in executing war.

"I tell [the cadets] there's been a lot of confusion about waterboarding," says Ryan. "Is it unlawful, and is it a war crime to do that? Yes! We're very clear about that."

In response, the Law Department launched a Rule of Law Center in 2008. The center reaches out to students at other military academies, as well as various universities. For instance, the cadets had a joint symposium-workshop on Shariah law with students from the Columbia University School of Law, which included a role-playing look at a custody dispute in a divorce.

At the center's inaugural conference in 2008, one featured speaker was Alberto Mora, who as general counsel of the Navy between 2001 and 2006 famously took the lead at the Department of Defense in opposing harsh interrogation techniques.

Mora spoke to the gathering about the rule of law and the war on terrorism, saying that we should not engage in cruelty, which by definition would preclude the greater evil: torture.

"Whatever else may be said about it in the future," Mora told the cadets, "this war is historically significant because we, as a nation—despite our laws, values and traditions—consciously applied cruelty against captives and sought to amend or reinterpret our laws to make this, which was illegal, legal."

ONE WAY THE NAZIS GAINED AND EXPANDED POWER was to gradually co-opt the justice system through its courts and lawyers. It was accomplished in such a fashion that, even after Germany lost the war, many continued to believe they had simply applied the law and done their jobs. The Nazis, meanwhile, gained legitimacy for reprehensible policies by wrapping them in the cloak of legal formality.

"The Nazis were working very carefully," says William Meinecke Jr., a historian at the Holocaust Museum who has developed a program aimed at teaching lawyers the lessons of the Holocaust.

"They knew they were dependent on these professions in operating the system, and wanted to bend it to their way of thinking."

The Nazis worked at getting sympathetic leadership in the organized bar; initiated a loyalty oath to Hitler as part of admission to practice; expanded the scope and reach of various laws; and developed incentives for lawyers to help gain their cooperation, as well as heavy-handed and sometimes brutal disincentives.

The Nazis cut the number of practicing lawyers by a quarter, weeding out those who might represent defendants considered enemies of the state or otherwise cause problems. They quadrupled pay for the rest, many of whom were either civil servants or received fees as court-appointed counsel.

"The oath of loyalty to Hitler was sometimes used to disbar lawyers representing defendants deemed enemies of the state," Meinecke says.

Since 2008, Meinecke has traveled the country presenting his interactive program, called "Law, Justice and the Holocaust: How the Courts Failed Germany." With a Socratic dialogue provoking thought but not providing solutions, it shows lawyers and judges how easily their shortcuts, choices and decisions could lead to the same slippery slope that facilitated Nazi aggression and the systematic genocide of European Jews they referred to as "the Final Solution."

"It takes ethics out of the realm of rules on the commingling of client funds and elevates them to a much more profound understanding of our role in a democratic society," says Sheila Polk, county attorney in Yavapai County, Ariz. "In my 27 years of practice and doing CLE every year, I've never encountered something that drove home the lessons in such a way. You come to understand the consequences of taking shortcuts, so you can fast-forward and see what might happen if you ignore something that seems minor—it opens you to larger and larger violations."

One of the most powerful stories in Meinecke's presentation concerns what happened at the very top of Germany's legal profession in 1933. Society was in turmoil, suffering in the midst of the Great Depression. Communists and Hitler's followers were locked in a violent competition to succeed the democratic but ineffectual Weimar government. Increasingly, Jews in German society were threatened by Hitler's efforts to marginalize them—efforts that were often unopposed.

As Meinecke tells it, after being appointed chancellor in 1933, Hitler later assumed the role of Führer, in effect closing out the coalition government. Soon after consolidating and thus seizing power, Hitler invited Erwin Bumke, then president of the Imperial Court—the equivalent of chief justice—to a one-on-one meeting.

Bumke had been nominated in 1929 by Germany's minister of justice, a liberal democrat who declared Bumke would not be influenced by the political infighting of that time. In 1933 the relatively new chief justice was skeptical of Nazis coming to power, but believed it would have no impact on the courts.

At their meeting, Meinecke says, "Hitler took Bumke by both hands, stared directly into his eyes and said, 'Herr Bumke, help me save Germany.' One cannot underestimate the power of Hitler's charisma here. By all accounts Bumke was converted to the Nazis' cause on the spot."

As soon as he got back to the court, Bumke removed the portrait of Germany's first chief justice, who had been a convert from Judaism and thus was still a Jew in the eyes of the Nazis.

THE HOLOCAUST MUSEUM HAS OFFERED SIMILAR TRAINING ON AN AD HOC BASIS since 1997. Among its clients have been the District of Columbia Bar, the D.C. police department and the Federal Judicial Center.

But it was a request in 2006 from Polk, the Arizona prosecutor, that set in motion the fuller, refined presentation that quickly has become much sought after by bar and judicial groups around the country.

That year Polk had been part of a delegation of 12 civic, political and law enforcement leaders from Yavapai County who visited the Holocaust Museum to learn about its course for police training. Polk was so impressed that she asked museum officials to design one for her prosecutors. It was presented in 2007 and, Arizona's dry heat notwithstanding, the effort snowballed. In 2008, Meinecke returned to repeat the presentation for the state judiciary, from magistrates to the Supreme Court; then he staged another in 2009 for the Conference of Chief Justices at their annual gathering in Santa Fe, N.M.

"Then it just exploded in 2010," says Meinecke, with more than 30 requests by December from various state courts and bar groups.

The museum doesn't promote the program because it can't keep up with demand created by word of mouth.

"I think they're all shocked how easy the transition was from democracy to dictatorship, and how early the courts failed," says Lynn Williams, director of the museum's Leadership Programs.

In December 2009, Polk apparently had her own epiphany. She had been asked to take over the prosecution of members of nearby Maricopa County's board of supervisors—who were facing corruption charges after challenging the controversial policies of Sheriff Joe Arpaio and Maricopa County Attorney Andrew Thomas.

After investigating the allegations, she was taken aback by their disturbing lack of substance. After Thomas filed criminal charges against yet another county official—a judge who ruled against him—Polk wrote a letter published in the *Arizona Republic*:

"I can no longer sit by quietly and watch from a distance. ... I am conservative and passionately believe in limited government, not the totalitarianism that is spreading before my eyes."

Some months afterward, a federal grand jury began looking into possible abuses of power by Thomas and Arpaio; that inquiry is ongoing. And last December an outside bar investigator from Colorado recommended that Thomas be disbarred. The investigative report alleges 31 ethical violations, including corruption and abuse of power. The state bar plans to hold hearings in July.

Discussions and debates triggered by the Holocaust and the Nuremberg trials touch on issues as old as warfare itself, though the complexity, scope and impact have grown beyond comprehension in a troubled and dangerous world. *Nuremberg: Its Lesson for Today* is providing a moral touchstone for legal professionals.

But even the rule of law cannot necessarily be attained without blood or sacrifice, says ambassador Rapp.

"We didn't get the Nazis into Nuremberg by serving arrest warrants in Berlin. We defeated them by the cost of millions of lives and brought them to justice. World War II had to be fought or the Holocaust would have been completed."

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