

## Developments

### Whitney Harris (1912–2010): The Last U.S. Prosecutor in the Nuremberg Trial Dies at 97

By Christoph J.M. Safferling\*



Whitney R. Harris was the last surviving prosecutor who appeared before the International Military Tribunal (IMT) at Nuremberg during the trial of the principal surviving Nazi war criminals. He died on 21 April 2010 in his 98th year.

I met Whitney Harris personally in July 2005 at the opening of a conference commemorating the 60th anniversary of the Nuremberg Trial in Courtroom 600 in the Palace of Justice in Nuremberg,<sup>1</sup> the very room where the Nazi war criminals were tried and sentenced. For me, born in 1971, it was the first time being entrusted with the honourable task of opening a prestigious conference. For Whitney Harris—aged 93 at that time—it was the first time to come back to the room and indeed the city where he together with others wrote world history sixty years before. When Harris spoke with his warm but sometimes eruptive voice in the room where he faced Herman Göring and other Nazi defendants, one could feel both the presence of the cruelty of war and the morality of the rule of law represented by a humane heart.<sup>2</sup> I will certainly never forget the sincere embrace of this old and hearty man when he thanked me for helping to organise this conference.

Whitney R. Harris was born on 12 August 1912 in Seattle, Washington. He graduated from the University of Washington in 1933 and received a J.D. from the University of California Berkeley Boalt Hall School of Law in 1936. In the same year he was called to the bar in

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\* Professor of international criminal law at the Philipps-University Marburg, Germany; Director of the International Research and Documentation Center for War Crimes Trials in Marburg; Email: christoph.safferling@staff.uni-marburg.de

<sup>1</sup> See Tobias Lock & Julia Riem, *Judging Nuremberg: The Laws, The Rallies, The Trials*, 6 GERMAN LAW JOURNAL 1819 (2005).

<sup>2</sup> See Whitney R. Harris, *Tyranny on Trial – Trial of Major German War Criminals at Nuremberg, Germany, 1945-1946*, in *THE NUREMBERG TRIALS: INTERNATIONAL CRIMINAL LAW SINCE 1945* 106 (Herbert R. Reginbogin & Christoph J.M. Safferling eds., 2006).

California. During the years 1936–1942, he practiced law in Los Angeles. After Pearl Harbor, Whitney Harris enrolled with the U.S. Navy and served as an officer until the end of the war.

Near the end of World War II, Lieutenant Harris was transferred to the Office of Strategic Services for special service. There he was entrusted with the collection of evidence of war crimes committed by the German forces. Not least because of this special service and his legal training he was to join the prosecution team of U.S. Chief Prosecutor Justice Robert H. Jackson in Nuremberg in August 1945. He remained in Nuremberg during the entire proceedings until their end on 1 October 1946 and was commissioned by Justice Jackson to supervise the execution of the death sentences, which took place in Nuremberg on 16 October 1946.

As prosecutor, he was to prepare the case against Ernst Kaltenbrunner, former Chief of the *Reichssicherheitshauptamt* (RSHA, or Reich Main Security Office) and the cases against the Gestapo and the *Sicherheitsdienst* (SD) as criminal organisations. Throughout the trial he was one of Justice Jackson's main and most trusted aids. He assisted Jackson in the cross-examination of Herman Göring, the most senior figure amongst the German defendants. Whitney Harris took part in yet another decisive moment of the trial when he put down the affidavit of Rudolf Höss, Commander of Auschwitz Concentration Camp, admitting for the first time to the murder of 2.5 million Jews. This was one of the rather rare occasions where the "Endlösung," the "final solution to the Jewish question," was made an issue during the trial.

After Nuremberg, Whitney Harris served as Chief Legal Advisor to the U.S. administration until after the Berlin Blockade. Upon his return to the USA in 1948, he taught law at Southern Methodist University in Dallas. He was the first Executive Director of the American Bar Association and finished his legal career as Solicitor General of Southwestern Bell Telephone Company in St. Louis.

Upon his return to the USA, Harris worked on a book on the Nuremberg trial, which was first published in 1954 under the title *Tyranny on Trial*. He undertook the monumental work of analysing the evidence on which the prosecution relied and presented the case against the Nazi war criminals in a precise and convincing way. To no other book on the Nuremberg trial Justice Jackson contributed a foreword. After this, as Whitney Harris told me later, for many years the Nuremberg chapter of his life was closed, but eventually his enthusiasm for international criminal law came back when he realised there was a chance to establish a permanent world court. A third edition of *Tyranny on Trial* was published in 1999 under different auspices;<sup>3</sup> the iron curtain had come down and the new international

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<sup>3</sup> 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* (1999).

criminal tribunals had been established by the United Nations relying on the Nuremberg law and legacy. In a late effort, he published a book on Rudolf Höss, *Commandant of Auschwitz*, in 2004 that contained many documents on the horrors of the concentration camp and the man behind the massacres, which were never before published in the English language.<sup>4</sup>

Whitney Harris did not only follow the developments that international criminal law had taken from the early 1990s onwards. He helped form them. He contributed much of his time to speak about his Nuremberg experiences and canvass the ideals of an international criminal justice system. He took part in the Rome Conference which led to the establishment of the Rome Statute for the International Criminal Court (ICC) and acted as advisor in particular for the German delegation to the Diplomatic Conference. His special relationship to Germany and the later German Judge at the ICC, Hans-Peter Kaul, was expressed by the fact that he was awarded the *Bundesverdienstkreuz* (Federal Cross of Merit) and was invited by the German government to attend the plenary session of the German Bundestag on 27 October 2000, when the Rome Statute was ratified and Germany became a Member State of the ICC. In the many personal conversations we shared, he expressed his appreciation of the fact that his work in Nuremberg was so well received in Germany 60 years after the execution of the Nazi war criminals. In November 2008, it was my greatest pleasure to present to him the German translation<sup>5</sup> of his main book, *Tyranny on Trial*, containing a foreword by Hans-Peter Kaul, when Whitney Harris spoke again—as it turned out for the last time—in Courtroom 600 in Nuremberg.

In the best American tradition, Whitney Harris contributed considerably to the academic world to support both life and human sciences. He endowed the Whitney R. Harris World Law Institute at Washington University in St. Louis in 2001, and funded the Whitney R. Harris World Ecology Center at the University of Missouri in St. Louis, proving thereby that the survival of mankind depends on both a stable international society and a balanced ecosystem.

His beloved wife Anna survives Whitney Harris. She was the one who carried him during these last years and gave him the strength and love that is needed to endure the hardship of cancer treatment. Her warm heartiness and hospitality leaves no one untouched.

Whitney Harris was a man who was proud of his country and driven by the struggle to contribute to the establishment of a more secure and peaceful world. He was full of belief that man with the help of God can achieve such a goal. Although the last person has died whom we could ask how it was to confront Göring with his deeds and how convincing

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<sup>4</sup> WHITNEY R. HARRIS, *MURDER BY THE MILLIONS: RUDOLF HOESS AT AUSCHWITZ* (2004).

<sup>5</sup> WHITNEY R. HARRIS, *TYRANNEN VOR GERICHT. DAS VERFAHREN GEGEN DIE DEUTSCHEN HAUPTKRIEGSVERBRECHER NACH DEM ZWEITEN WELTKRIEG 1945-1946* (Ulrike Seeberger trans., Christoph Safferling ed., 2008).

Speer was in downplaying his role in the NS-Regime, Whitney Harris will always be remembered as one of the key figures in the Nuremberg trial, who stood for his convictions until his last breath.