

THE NUREMBERG JUSTICE MINISTRY TRIAL OF 1947

Senior Counsel Section

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In 1941, 76-year-old Leo Katzenberg, a prominent Jewish businessman in Nuremberg, Germany, rented an apartment in his house to Irene Seller, a non-Jew who was the 30-year-old daughter of Leo's non-Jewish friend. Leo, who had rented the apartment to Irene as a favor to his friend, was eventually accused of having a sexual affair with her. While Leo and Irene admitted kissing with Irene on Leo's lap, an investigator found no evidence of sexual intercourse. Nonetheless, Leo was arrested for race defilement in violation of a 1935 Law for Protection of German Blood forbidding relations between Jews and Aryans. Both Leo and Irene denied the accusations, claiming they were like father and daughter.

So began the presentation by Second District Court of Appeal Judge Edward LaRose to over 50 people, including 15 judges, at the Senior Counsel Section Luncheon on "The Nuremberg Justice Ministry Trial of 1947" at the Ferguson Law Center. Judge LaRose described

how Leo was tried before the Nuremberg Special Court, which had been established in 1933 with jurisdiction over cases involving inciting disobedience of governmental orders, sabotage, and acts contrary to public welfare. Leo's case was tried by Judge Oswald Rothaug, a rabid Nazi who referred to Leo as "an agent of world Jewry" and a "syphilitic Jew." In a trial without due process, Leo was convicted and sentenced to death by Judge Rothaug. Leo was beheaded in 1942.

In the spring of 1945, the victorious Allies organized an International Military Tribunal to try Nazis responsible for the atrocities in Europe. The most famous Nuremberg trials involved Rudolf Hess, Albert Speer, and Herman Goering. But other lesser officials were also tried. In the Nuremberg Justice Ministry Trial of 1947, Judge Rothaug was on trial for convicting and sentencing Leo to death without due process of law. (The story is fictionally recounted in the 1961 film *Judgment at Nuremberg* with Burt Lancaster in the role of Judge Rothaug and Judy Garland as Irene.)

Judge Rothaug's lawyer argued that Rothaug should not be bound

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by *ex post facto* laws, that he was just following orders, and that he was bound by legislative acts. The prosecutor pointed out that Rothaug had acquiesced in the Nazification

of the judiciary into a political tool for the Nazis. The Special Courts, he added, were not legitimate courts, but a vehicle for suppression of expression whose victims included Jews, Poles, and gypsies. There was no semblance of due process and no appeal.

Judge LaRose discussed the legacy of the Nuremberg trials and asked difficult questions to ponder: What does the Justice Ministry Trial of 1947 say to us as lawyers and judges in a diverse, pluralistic, and ever-shrinking world beset by violence, prejudice, and inequality? Do we reject the existence of natural law? How do we react to an unjust law? Do we work to repeal it, commit civil disobedience, work to limit its reach, or resign? Should we defer to civil government in the hope that, over time, laws will be just? To what extent do our actions or inaction perpetuate unjust laws?

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