

Whitney Harris: US prosecution team at the Nuremberg trials



Whitney Harris

“Mr Höss told me, as unemotionally as if he were talking at the breakfast table, that 2.5 million people were killed at Auschwitz.”

There can have been little in his legal training or service in the United States Navy that prepared Whitney Harris, then in his mid-thirties, for his encounters with many of the worst Nazi war criminals. His three-day interrogation of the former commandant of Auschwitz, Rudolf Höss, was part of Harris's work as a member of the US prosecuting team at the International Military Tribunal which tried Third Reich figures in Nuremberg in 1945 and 1946.

It was a challenge demanding legal skills, tenacious research and the psychological ability to cope with the revelations of Nazi barbarity. Höss suddenly became available as a potential witness when he was captured by the British after most of the evidence had been gathered for the trials.

The aim at Nuremberg was to assemble, from the postwar chaos of Europe, what Harris called “an irrefutable record set of what happened under the Nazi regime”, as well as a case against the worst perpetrators that would secure their punishment and establish new principles of international law. So Harris had to hear Höss describe what he had done at Auschwitz while retaining the detachment of the legal mind.

The revelation of 2.5 million deaths, Harris recalled, “did not unnerve me, it affected me like a statistic. If, however, he had described the death of a single child, I would have been shocked.”

It seemed hard to link the often pathetic-looking figures on trial with what they done at the height of their power. Harris later told the German magazine *Der Spiegel* that Höss “was not in the least bit imposing; there was nothing about him that suggested a monstrous murderer”.

Before the trials, Harris later admitted: “I did not have the slightest idea of the scale of genocide that had taken place . . . we didn't have much solid evidence.” But, by the painstaking assembly of factual evidence through interrogation and the sifting of many documents, Harris and his prosecuting colleagues were able to build a case that secured convictions and revealed much

to the outside world about how the Holocaust had come about.

Höss (who would later be tried and executed near to the scene of his crimes in Poland) was used in evidence for the broader case that Harris was compiling against Ernst Kaltenbrunner, who had been chief of the Reich main security office, and against two of its principal agencies, the Gestapo and the security service or SD. This investigation helped to reveal the origins of the mass extermination of Jews and others in Eastern Europe before the death camps were established, in particular the horrific work of the Einsatzgruppen, special units that followed behind the advance of the German Army eastward in 1941.

In another grimly successful interrogation, Harris heard Otto Ohlendorf, who had commanded one of the Einsatzgruppen, admit that his men had murdered 90,000 men, women and children in 1941 alone.

Such confessions were combined with documentary evidence gathered as far as possible amid the rubble of the Reich and its former territories. "We were really surprised at the documentation we were able to come up with," said Harris, who began his work at Nuremberg armed only with a second-hand typewriter and the help of a secretary. "I went through Gestapo offices and dug through rubbish and found documents ordering the extermination of Jews. We scurried all over Europe getting evidence."

The case against Kaltenbrunner became formidable. While "most of the defendants admitted that war crimes and the Holocaust had occurred but tried to play down their own individual involvement", Harris sensed that "Kaltenbrunner did not believe he would be spared". He was the only one of the defendants sentenced to death who did not appeal.

It was all a far cry from the professional legal routine that Harris had settled into a decade or so earlier. Born in 1912 in Seattle, the son of a car salesman, he graduated in 1933 from Washington University and then, as jobs were hard to find in the Depression, continued studies at the University of California law school.

After working as a lawyer in Los Angeles for five years he joined the US Navy as his country joined the war in 1941, served in the Pacific and became an officer, before in 1945 he was assigned to the Office of Strategic Services, an intelligence agency, investigating war crimes in Europe. Based in London, he began to work with Justice Robert Jackson, who had been sent by the US to London to prepare for the indictment and trial of Nazi leaders. Harris joined Jackson's team, which then moved to Nuremberg to begin the prosecutions in collaboration with other teams from the victorious Second World War powers. He was there from August 1945 until October 1946.

As well as preparing his own cases, Harris had a ringside seat at the macabre theatre in the Nuremberg courtroom, making his own assessments of the different defendants. There was Julius Streicher, former publisher of the particularly vile anti-Semitic newspaper *Der Stürmer*, "without a doubt the most unpleasant of them all". Albert Speer, Hitler's former architect who escaped a death sentence, "made a very positive impression because he did not try to talk his way out of it". And there was Hermann Goering, former head of the Luftwaffe, arrogant to the last, who "assumed the role of leader of the defendants", trying to "challenge the prosecution in every possible way".

There were even moments of black humour, when the prosecution tripped up Rudolf Hess, once Hitler's deputy, who ludicrously claimed to be suffering from complete amnesia.

When the trials came to an end Harris also witnessed the final drama, as Jackson's personal representative at the hanging of those sentenced to death in the Palace of Justice in Nuremberg on the night of October 15, 1946. Goering cheated the executioners by committing suicide. But early the next day, recounted Harris, "two trucks, carrying eleven caskets, left the prison compound . . . bound for Dachau Concentration Camp, near Munich, where . . . the bodies were burned in ovens which had been designed, and used, for Dachau prisoners".

After Nuremberg, Harris worked in the late 1940s as legal adviser to the US military government in Berlin as the Cold War began to intensify. He then returned to the US to pursue an academic and private career in law.

But the Nuremberg experiences continued to dominate his thoughts. In 1954 he published a book, *Tyranny on Trial*, giving a full account of the prosecutions and what they had uncovered. He was a regular contributor to seminars and media accounts of those momentous months.

He also campaigned vigorously for a permanent international court to uphold what he saw as the principles that the Nuremberg trials had established. Nuremberg, he pointed out, had been established only in retrospect, after the crimes had been committed. A permanent court would mean that "no one — whether general, or head of state — could ever say again, he didn't know that he would be called to account for his actions".

As proposals for an International Criminal Court advanced, Harris was dismayed that the US, which had taken such a strong lead in prosecuting in Nuremberg, now refused to accept the jurisdiction of the new court. But he took great pleasure in his invitation in 2000 to witness the German state accede to the court's jurisdiction in Berlin. This was, he said, final recognition by the Germans that "what we did in Nuremberg was right".

Those months in 1945 and 1946 had been not only a huge legal challenge, but also the most testing of times for a young man suddenly confronted with the human detail of the Holocaust. That experience haunted him, and he could be pessimistic. "I believe there is a God; I believe God is merciful and just, but if Man desires to destroy himself, I believe God will not save him,"

he once said. But the Nuremberg trials, he believed, stood “firmly against the resignation of Man to the tyranny of evil leaders”.

Harris was married in 1964 to Jane Foster, who predeceased him, in 1999. He is survived by his second wife, Anna Galakatos, and by a son, three stepsons and a stepdaughter.

Whitney Harris, lawyer and prosecutor at the Nuremberg trials, was born on August 12, 1912. He died on April 21, 2010, aged 97

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