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The Nuernberg Trial

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SOME IMPORTANT EVENTS IN 1946

THE NUERNBERG TRIAL

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The Nuernberg trial began on November 20, 1945 and ended on October 1, 1946 with the sentencing of twelve of the Nazi defendants to death by hanging and seven to imprisonment for terms ranging from ten years to life. Schacht, von Papen and Fritzsche were acquitted. The Control Council for Germany considered applications for clemency for most of those convicted but did not grant them, and carried out the execution for those sentenced to death on October 16, with the exception of Martin Bormann who had not been found, and Hermann Goering who had committed suicide a few hours earlier.

The Tribunal composed of a judge and an alternate each from the United Kingdom, the United States, the U. S. S. R. and France, based its judgment upon the Charter agreed upon by the four powers on August 8, 1946 and later accepted by nineteen others of the United Nations. The Charter defined as crimes the preparation, planning, initiation and waging of aggressive war; conspiracy to that end; war crimes in the narrow sense; and crimes against humanity, including wholesale massacre and enslavement of civilians in pursuance of aggressive war. The Tribunal found that these acts were recognized as individual crimes in customary and conventional international law which bound the defendants when the acts charged were committed. It also found declaratory of preexisting international law, the provisions in the Charter which denied to persons accused of these crimes the defense that they were justified by state authority or superior orders. "Acts of state" or "superior orders" which were themselves beyond the state's competence under international law had never, the Tribunal held, conferred immunity for crime. The Tribunal also found that the jurisdiction conferred upon it by the Charter was supported by accepted principles of international criminal law and by the authority of the four powers in their capacity as the government of Germany. The Tribunal thus denied the charge

made by the defendants and by others that it was administering *ex post facto* law.

In reaching its judgment, the Tribunal weighed the testimony of over a hundred witnesses, considered several thousand documents presented in open court, and examined a number of affidavits and interrogations taken out of court. The oral record occupied 17,000 pages and the judgment itself 283 pages. The Tribunal took especial pains to give the defendants opportunity to obtain the counsel of their choice and the witnesses and documents relevant to their defense, and to argue the legal problems through counsel and in person. The procedure constituted a model for an international criminal tribunal.

The judgment gives precision to the principles of international law which have developed during the past generation in the effort to "outlaw war." The meaning of "aggressive war," both as an international delinquency and as an individual criminal offense, and the international law concerning superior orders, acts of state, criminal conspiracy and criminal organization were clarified.

President Truman pointed out that "this precedent becomes basic in the international law of the future," and remarked in opening the United Nations General Assembly in November, 1946, that the members were bound by the law of Nuernberg as well as by the law of the United Nations Charter. While opposition to the trial and the judgment has been expressed in some quarters, both on the ground that it was novel and on the ground that the sentences were in some cases too lenient, legal opinion has generally considered the trial and its results important contributions to international law and to the organization of the world for peace.

THE "BROOKLYN PLAN" OF DEFERRED PROSECUTION FOR JUVENILE OFFENDERS

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In the area of rehabilitating the offender, one of the pioneering ventures of the year 1946, was that which is sometimes referred to as the "Brooklyn Plan" of voluntary probationary supervision without trial or conviction in federal criminal

cases. It was first tried in the federal court of Brooklyn, N. Y., as an experiment, but in January 1946, the Attorney General of the United States authorized all United States attorneys to make use of the new procedure when juvenile offenders are involved.

While "prosecution deferred" is not a new technique in some juvenile or domestic relations courts, it is a new experiment in federal juvenile practice. Before 1938 all children charged with a federal offense were processed as adults in the federal courts; that is, by indictment, jail detention, trial, presentence investigation by court officer if ordered, and finally sentence, either to a reformatory or on probation. After 1938 the indictment was made unnecessary in juvenile cases, and public court trial was not imperative. A juvenile could be brought before the court on criminal information only, and could be heard in chambers, if he signed a waiver of formal prosecution. This is followed by a formal court order either sentencing the child or placing him on probation. This court order leaves a *record,* a stigma on the child even though fingerprints are not permitted to be taken.

According to the Brooklyn experiment, however, the juvenile case is processed by the district attorney and probation officer working together *prior to prosecution* to determine whether or not prosecution is necessary. Prosecution is deferred for a week or so by the United States attorney who refers the matter to the probation officer for a pre-prosecution investigation, study and written report of the background of the juvenile offender and his possible culpability. The information for this report is secured in the same manner that data is collected for a presentence report for the courts, but this pre-prosecution report may never get to the courts. On the basis of the findings, the United States attorney decides whether or not to defer action for a definite period. If he decides not to prosecute for the time being, he requests the probation office in writing to exercise the disciplinary supervision of probation for whatever length of time he designates. At intervals the probation office prepares progress reports for the United States attorney and at the expiration period the probation department submits a full report and recommendation. If this report is favorable the original complaint is marked "not entertained." The youthful offender has no record, no criminal stigma and society has been as well protected as if the boy had been formally placed on probation. His compliance with regulations may have become more spontaneously motivated under this procedure than under the compulsory supervision of a court order.

This method of processing a case calls for an exercise of judicial powers by the United States attorney. Administering this

processing is left to the probation office. During the suspension of judgment the youth is given an opportunity to demonstrate that he is worthy to be returned into society. Of two hundred cases supervised in this manner in Brooklyn only two violators had to be referred to the courts by due process of the law. Of this group of two hundred provisional "releasees" under deferred prosecution an appreciable number finished high school, vocational school or college, which achievements might not have been the case if their course of life had been interrupted by incarceration or by the stigma of prosecution. Although these results compliment the new procedure, it is still too early to fully evaluate the advantages and disadvantages of this recent innovation in the federal judicial process.

PRIVILEGES AND IMMUNITIES

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The subject of privileges and immunities from arrest and prosecution has always occupied an important place in the literature of the law. This is particularly observable in the field of international relations. By general usage and the comity of nations the person of a duly accredited foreign sovereign has been exempted from such action by our authorities for offenses committed in violation of the law of this land. So also has immunity been accorded the retinue of foreign sovereign authorities, ambassadors, ministers, their families and their servants. But through the years, with an upswing of commingled international interests, the problem of adjusting our national law enforcement needs with international interests has become an increasingly provocative one. Gradually the privileges extended to the selected few have broadened to encompass others. This is to be observed, for example, in the recent Convention between the United States and Mexico, signed at Mexico City, August 21, 1942 (Treaty Series 985) under which heretofore unusual privileges and immunities were granted consular officers:

1. Consular officers, nationals of the State by which they are appointed, and not engaged in any private occupation for gain within the territory of the State in which they exer-

cise their functions, shall be exempt from arrest in such territory except when charged with the commission of an act designated by local legislation as crime other than misdemeanor and subjecting the individual guilty thereof to punishment by imprisonment. Such officers shall be exempt from military billetings, and from service of any military or naval, administrative or police character whatsoever.

2. In criminal cases the attendance at court by a consular officer as a witness may be demanded by the plaintiff, the defendant, or the judge. The demand shall be made with all possible regard for the consular dignity and the duties of the officers; and there shall be compliance on the part of the consular officer.
3. A consular officer shall not be required to testify in criminal, contentious-administrative, labor or civil cases, regarding acts performed by him in his official capacity.

Note that arrest is legally justified only if the offense charged is a felony. In respect to misdemeanors, Mexican consuls are exempt from arrest.

Significant privileges and immunities are to be observed, likewise, in the provisions relating to the United Nations organization. Let us examine them for they point a way and a problem of unusual significance to coming law enforcement.

Privileges and immunities granted to the United Nations organization and its members are found in three provisions: the first in the United Nations Charter, the second, in Public Law 291 (79th Congress), and the third, in Executive Order 9698 promulgated by the President of the United States on February 19, 1946. In the United Nations Charter (Chapter XVI, Article 105) is found this covenant:

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Turning to Public Law 291 we find that Section 7 outlines the basic national policy of immunity in the following terms:

Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.

And finally, the President of the United States in his executive order 9698 declared that the United Nations are "entitled to enjoy the privileges, exemptions and immunities conferred by

the International Organization's Immunities Act." Such are the bases of privileges and immunities as they relate to the United Nations organization.

But while the field of immunity has been broadly outlined, the specifics remain in the field of conjecture. Such terms as "suit and legal process," "official capacity," "falling within their functions as such representatives," and so on are generic only. As in other matters of the law, it must remain for judicial interpretation to explore the quantitative and qualitative horizons of the immunities granted and to point out the specific limitations therein. The first of coming decisions was recently handed down. It is an interesting one. And while it may not set the precedent for later judicial action, it sheds important light on problems involved and consequences ensuing in the proper administration of justice.

Facts of the case at hand were briefly these: William Ranollo, the defendant, was charged with violation of the speed laws of the Westchester County Park Commission. At the time and place complained of he was an employee of the United Nations organization and was driving a car on United Nations business and was at the time accompanied by the Hon. Trygve Lie, Secretary-General of the organization. Defendant urged that by virtue of the privileges and immunities conferred by the United Nations Charter, Public Law 291 and Executive Order 9698, that *all* persons accredited to the United Nations are exempted from prosecution or suit, criminal or civil, and without regard to the degree of offense committed. His plea was, therefore, one of *total* immunity.

The court first reviewed the problems at issue. On the one hand he said, there is no disputing the proposition that if an international legislative body is to function properly within the borders of a particular nation that a certain amount of immunity, exemption and privilege is necessary to insure their necessary personnel against harassment by any court proceedings, civil or criminal, in order that the deliberations of such body may proceed uninterruptedly and with maximum measure of success in the interest of all. The logic is sound, the necessities of international cooperation evidence the need. But then he went on to point out that to recognize the existence of a *general and unrestricted immunity* from suit is carrying the principle of immunity completely out of bounds. To establish such a principle, said he, would in effect create a large preferred class within our borders who would be immune to punishment for which the average American would be subject. Such a theory does violence to the American sense of fairness and justice, is repugnant to it, and flouts the basic principle of the United

Nations itself, which, in the preamble to its Charter affirms the principle of equality of all men and women.

Such is the issue raised. On the one hand is demand for total immunity in the interests of international comity and the success of international operation; on the other, the contention that the creation of a preferred class above and beyond the national law imperils the fair and impartial administration of national justice. How to harmonize one with the other is the problem. To this end the court in its opinion stated:

> This Court feels strongly that the question of immunity under these circumstances should be entrusted not to the whim or caprice of any individual or committee that might speak for the United Nations Organization, but rather that such immunity should be available only when it is truly necessary to assure the proper deliberations of the Organization—a circumstance that could be readily brought about if the granting of immunity were restricted to those cases where our State Department certified that the exemption from prosecution or suit was in the public interest.

It was therefore the decision of the court that upon the facts in the case the defendant is not entitled to immunity as a matter of law without a trial of the issue of fact, and is accordingly required to plead to the information before the Court. —County of Westchester on Complaint of *Walter Connelly v. William Ranollo.* City Court of New Rochelle, New York, October, 1946.