

Henry T. King, Jr.

Henry T. King, Jr.

A Life Dedicated to International Justice

Edited by

Michael P. Scharf

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2011
Michael P. Scharf
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Scharf, Michael P., 1963-

Henry T. King, Jr. : a life dedicated to international justice / Michael P.
Scharf.

p. cm.

Includes index.

ISBN 978-1-61163-038-1 (alk. paper)

1. King, Henry T., 1919-2009. 2. Lawyers--New York (State)--Biography. 3.
Law teachers--Ohio--Cleveland--Biography. 4. Milch Trial, Nuremberg, Ger-
many, 1946-1947. I. Title.

KF373.K498S33 2011

340.092--dc23

[B]

2011019755

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

“The legacy of Nuremburg is the rule of law with justice. Peace with justice ... the rule of law applied across the board to everyone in the world, all humanity. The rule of reason, not force.”

—Henry T. King, Jr.

Contents

Foreword	ix
<i>Dave King</i>	
Acknowledgments	xiii
Introduction	xv
<i>Michael P. Scharf</i>	

TRIBUTES

REFLECTIONS ON AN EXTRAORDINARY LIFE

Congressional Record	3
<i>Congressman Dennis Kucinich</i>	
Tribute to Henry King	5
<i>Barbara R. Snyder</i>	
The Spirit of Nuremberg and Henry T. King, Jr.	7
<i>David M. Crane</i>	
Remarks at the Memorial Program for Professor Henry T. King, Jr.	11
<i>Eli M. Rosenbaum</i>	
Dean's Tribute to Henry King	15
<i>Robert H. Rawson, Jr.</i>	
Henry King: A Bridge to Canada	17
<i>Ian Holloway QC</i>	
Henry King Remembered	19
<i>Sidney Picker, Jr.</i>	
Henry King: Reflections on a Legal Giant	23
<i>Jonathan L. Entin</i>	
Henry King, My Colleague	27
<i>Erik M. Jensen</i>	

Henry T. King, Jr., at Case, and on the Nuremberg Case <i>John Q. Barrett</i>	29
A Tribute to One of the Fathers of International Criminal Law <i>Michael P. Scharf</i>	39
Tribute to Henry King: A Great Mentor <i>Dan Ujcz</i>	45
Professor Henry T. King, Jr., 1919–2009: Honoring His Legacy <i>Christopher M. Rassi</i>	49
Henry King: Much More Than a Teacher <i>Tom Renz</i>	53

THE CWRU BROWN BAG PRESENTATIONS

Discussion 1 · Early Life	57
Q&A—Discussion 1	65
Discussion 2 · My Experience at Nuremberg	67
Q&A—Discussion 2	73
Discussion 3 · The Personalities and Politics	79
Q&A—Discussion 3	88
Discussion 4 · Coming Home	93
Discussion 5 · Progress	103
Q&A—Closing Discussion	113

SELECTIONS

Selected Images from Henry's Life	117
Selected Works by Henry King	125
Milch Trial Closing Argument	126
Without Nuremberg—What?	128
Robert Jackson's Transcendent Influence Over Today's World	137
War Crimes and Crimes Against Humanity:	
The Nuremberg Precedent	150
Origins of Modern International Arbitration	156
Index	179

Foreword

Dave King[†]

About four years ago, my dad called me in Brooklyn to say that Professor Michael Scharf had invited him to deliver a series of informal autobiographical talks at Case Western Reserve Law School. Dad was enormously excited by the project, which he saw as a dual opportunity: first, to engage the students in a way that was more intimate than the customary classroom dialectic, and second, as the first step in a projected memoir that Dad had long contemplated but never quite settled down to write.

My father delivered the talks in the winter of 2008, and he was delighted with the response. Dad's love of the Law School's student body was intense, and each week he'd call me with a kind of morning-after review in which he'd crow about the students' interest and enthusiasm, the depth of their curiosity, and the perspicacity and braininess of their many inquiries.

The memoir project, though, languished. There were issues with transcribing the audiotapes, for one thing, but a greater delay may simply have been Dad's preference for engaging the present and the future over the past. It was one of many ways he'd found to remain young. So I can't tell you how touched I was when I learned that a team including Michael Scharf, Eli Rosenbaum, John Barrett, Tom Renz, my sister Suzanne Wagner, and others had taken on the job of resurrecting and transcribing those tapes, working as much as possible with Dad during his last months, and had produced a manuscript.

I mention this incident because it's typical of the loving and supportive community that Dad found at Case Western Reserve Law School. His quarter century at Case formed only the final chapter of a very long career, but I can say without reservation that it was among the most joyful in a professional life that was, in general, unusually happy and fulfilled. Dad always had a practice of mentoring young lawyers, but as a professor he made that practice a voca-

[†] Novelist and poet; author of *THE HA-HA* (2005).

tion, and one had only to visit a class to sense the excitement and enthusiasm he found in teaching. My father was lucky in living long enough to see many of his former students make their own marks on the broader world, and he took tremendous pride in watching as a generation of young women and men made the shift from being his students and became friends and colleagues.

Likewise, one had only to stroll the halls of the Law School with him to realize that here was a realm where Dad was blessed in his associates. I don't think it's likely that when he arrived in 1983, my father intended to stay virtually the rest of his life, but I think it's clear that he stayed because he found a home. The kinship he discovered at Case was one of the great satisfactions of his later years, and the work he did at the university and beyond constitutes his last great adventure. Furthermore, the environment of respect, friendship and congeniality that the Law School provided prompted Dad to develop attributes—a gift for teaching, of course, but also an interest in the kind of purer legal intellection common in academe—that had perhaps been underused in his earlier government and corporate lives. As my sister pointed out not long ago: as a law professor, Dad found a medium that allowed the very best of him to flourish.

My father's last quarter century was a kind of miracle of activity. At a time when some people fly south, he dedicated himself to teaching and advocacy. For more than two decades, Dad's remarkable energy powered the Canada-United States Law Institute, a stewardship that brought him an honorary doctorate from The University of Western Ontario. In 1998, he joined Nuremberg colleagues Whitney Harris and Benjamin Ferencz in Rome to lobby for the inclusion of crimes of aggression in the statute of the International Criminal Court. And always there were invitations to speak or serve on panels, to visit schools and join conferences and address interest groups. To engage, with his big, occasionally boisterous public presence, the issue that grew increasingly pressing even as it came within reach: the idea of world peace through law. This is why it seems so fitting that the name of Henry T. King, Jr should be associated both with Case's War Crimes Research Center, in whose work he cherished a profound belief, and with the library of the Robert H. Jackson Center in Jamestown, New York.

Often in these years, he and I spoke of a memoir. Dad's hunger to publish had been somewhat satisfied by *The Two Worlds of Albert Speer*, the Nuremberg reflections he published in 1997, yet the prospect of a second volume, his report on a life shaped definitively by the trials and his response to the question of what one does next—remained deeply tantalizing to him. In the end, of course, Dad addressed this material in the way that came naturally: orally, to an audience of the young. That strikes me as philosophically suitable and

also typically Dad, for he said often and proudly that he was a people person, like his parents—curious, opinionated, engaged, and sweetly witty—and he brightened at any human contact, whether an audience of a thousand or a young grandchild across the breakfast table. He never experienced the loneliness of the elderly.

Dad's friends in his last decades included fellow lawyers and professors, of course, as well as a long series of kind and devoted secretaries, plus guards, librarians, university maintenance people, and even the nice audio technician who tenderly pinned him with a microphone before each class session. Beyond University Circle, there were the members of the Greater Cleveland International Lawyers' Group, which Dad headed for years; colleagues from the Niagara Moot Court; and friends from his years in government and corporate law. I wish I could thank all these folks by name, but once I got started I might never stop, so I'll thank you now, as a community; those friendships nourished him and kept his life vital.

Let me now yield these pages to those in Dad's field, who can address his professional legacy more skillfully than I. On behalf of Suzanne and me and our late mother and brother, and most of all on behalf of our late father, who would be profoundly moved by this project, I thank the colleagues and students who worked on editing and organizing Dad's final manuscript, and I also thank the many eminent friends and admirers who offer their reflections and tributes here.

Acknowledgments

Several people and entities deserve special recognition for the assistance they have provided to this book project, which grew out of a series of autobiographical lectures delivered at Case Western Reserve University School of Law by Henry King in 2007–2008.

A debt of gratitude is offered to Henry's assistant, Deborah Turner, who transcribed the recordings of those lectures. Thanks also to Case Western Reserve University School of Law students Tom Renz and Sohail Hasanali, who tirelessly edited the transcripts and formatted the text. Thanks also to Henry's daughter, Suzanne Wagner, who went over each and every line with Henry to ensure that they reflected what he meant to say, and to Professor John Barrett, who helped ensure that the text was historically accurate in every respect.

A special thanks to Henry's son, Dave, for providing the book's Forward, and to David Crane, Jonathan Entin, Ian Holloway, Erik Jensen, Sidney Picker, Christopher Rassi, Robert Rawson, Eli Rosenbaum, Barbara Snyder, and Dan Ujczko for providing such thoughtful contributions for the book's tribute section.

Appreciation also goes to Case Western Reserve University School of Law, which provided institutional support for this project, and which created a permanent display of photos in the third floor of the law library to honor Henry's accomplishments. Thanks also to Greg Petterson of the Robert H. Jackson Center, who provided the photos of Henry at Nuremberg for the book and library display.

We are also indebted to Keith Sipe and Linda Lacy, who had faith in this project from the beginning, and their team at Carolina Academic Press, which moved it forward through the publication process.

Finally, thanks to Henry, who inspired us all!

Introduction

Michael P. Scharf

Henry T. King, Jr., one of the last of the Nuremberg war crimes prosecutors and an influential voice since World War II in international efforts to bring war criminals to justice, passed away just short of his 90th birthday on May 9, 2009. In his nine decades on the planet, Henry had done much to change the world. His work and writings influenced three generations of students, diplomats, and even heads of state.

Henry graduated from Yale Law School in 1943. A heart murmur kept him out of the military in World War II. But after the war, he quit his job at a prestigious New York law firm to accept a position on the prosecution team at the Nuremberg War Crimes trials. He was 26 years old, the youngest member of the prosecution, when he arrived at war-ravaged Nuremberg. “As I walked to the courthouse for the first time, I said I’m going to dedicate my life to the prevention of this,” he told the audience at a conference I attended in 2008.

At Nuremberg, Henry assisted in the main trial and then became the number two prosecutor in the case of Field Marshal Erhard Milch, who was ultimately convicted by the tribunal at Nuremberg of charges relating to the abuse and executions of slave laborers. After returning from Germany, Henry played a key role in the Marshall Plan, serving as Acting General Counsel of the agency that would subsequently be christened “US-AID.” Later, he became Chief International Corporate Counsel at TRW, the position that brought him to Cleveland, which would be his home for the remainder of his life.

At age 62, Henry joined the faculty of Case Western Reserve University School of Law, teaching courses on international business transactions and international arbitration. During those years, he was active in the American Bar Association, eventually serving as Chairman of the ABA’s International Law Section. He was also appointed U.S. Director and later Chairman of the Board of the Canada-US Law Institute, and used that platform to help develop the North American Free Trade Agreement. In honor of his significant contributions to

Canada-US relations, the government of Canada appointed Henry Honorary Consul of Canada to Northeast Ohio.

But throughout the years, Henry's focus remained on peace and justice. "Nuremberg left a lifelong imprint on Henry King," his friend Professor John Barrett explains, "and through the next 60 years of his life, he spoke and wrote constantly about the value that came out of Nuremberg."¹

Half a century after Nuremberg, Henry joined forces with two other Nuremberg prosecutors, Whitney Harris and Benjamin Ferencz, to help shape the creation of the International Criminal Court. When delegates from 131 nations met in Rome in 1988 to establish the tribunal, the three Nuremberg prosecutors traveled to Italy to lobby for inclusion of the crime of aggression, a crime that they considered the most important of the offenses prosecuted at Nuremberg. Despite resistance from several powerful states, the three wizened Nuremberg Prosecutors' moral authority and persistence paid off, and the crime of aggression was included within the Court's Statute, under a provision that would require agreement on the definition and a triggering mechanism at a future date.

In the years following the Rome Conference, though in his 80s, Henry maintained an ambitious speaking schedule, traveling from conference to conference across the United States and around the world. He remained an energetic and passionate speaker on the subject of international justice, often pounding his fist on the table during speeches to punctuate the importance of his words.

Meanwhile, at Case Western Reserve, Henry had attained a status akin to the Dalai Lama. There were long wait lists for his classes, and students who were not enrolled often crammed into the back of the room for a chance to absorb Henry's wry pearls of wisdom. It was in this context, that I persuaded Henry to do a series of tape-recorded lunch time presentations for the students and faculty, in which he would share the lessons learned from his lifetime of experiences.

We transcribed and edited the recordings of those sessions so that future generations of scholars and practitioners can benefit from Henry's insights through his own words. This short book is the result of that project. It begins with several tributes to Henry from his colleagues and friends, including a member of Congress, the Prosecutor of the Special Court for Sierra Leone and the Director of the Department of Justice's Office of Special Investigations. It then contains five chapters in which Henry discusses lessons from his early life,

1. Dennis Hevesi, *Henry T. King Jr., Prosecutor at Nuremberg, Dies at 89*, THE NEW YORK TIMES, May 12, 2009, available at: <http://www.nytimes.com/2009/05/12/us/12king.html>.

his experience at Nuremberg, and his post-Nuremberg experiences. The book concludes with some of Henry's noteworthy works, including his Closing Argument in the Milch Case at Nuremberg.

Henry asked that this book be dedicated to the victims of international atrocities around the world and that any profits from its sale go to a scholarship fund set up at Case Western Reserve School of Law to launch the next generation of international lawyers working to achieve Henry's vision of a world of peace and justice.

Michael P. Scharf

John Deaver Drinko—Baker & Hostetler Professor of Law
Case Western Reserve University School of Law