



Wayne R. Gross
President's Page

Rationing Justice

If we are to keep our democracy, there must be one commandment: thou shalt not ration justice.

~ Judge Learned Hand

My father was a public high school teacher and had limited means with which to raise a family. And so I grew up in a neighborhood where most kids worked as soon as possible or, in the case of the misguided ones, went to other places where you didn't see them again. My father, to ensure that I would have future educational opportunities, insisted from the time I was ten that I maintain a strict regimen of constant reading. This did not bother me at all, as I found reading to be one of the great pleasures of life. What I didn't like, however, were the many book reports he assigned me during summer "vacations." Accordingly, while many of my friends were able to while away their summer days on more typical boyhood pursuits, my days were spent providing my dad with extensive synopses of books authored by C.S. Lewis, Rudyard Kipling, and others. Truth be told, I enjoyed writing; I just didn't enjoy being mandated to do so while everyone else goofed around. And so I took time off every day to watch old movies that came on our outdated black-and-white television. One such movie was *Judgment at Nuremberg*. It instantly became—and still is—my favorite movie. It changed my life.

The 1961 film was inspired by the Judges' Trial before the Nuremberg Military Tribunal in 1947, where judges were accused of crimes against humanity during the Nazi regime. In the movie, Judge Dan Haywood (Spencer Tracy), as the Chief Justice in the case, sought to understand how the German people, including the seemingly wise and brilliant German jurist Ernst Janning (Burt Lancaster), could have turned blind eyes and ears to the Holocaust by, for example, passing sentences resulting in genocide. It was against this backdrop that the prosecutor (Richard Widmark) and Janning's defense lawyer (Maximilian Schell) competed against one another before the tribunal, brilliantly examining witnesses on the question of individual complicity in crimes committed by the state. The examinations, even to a ten-year-old, were magnificent. So much so that I, much later in life as an adjunct law school professor, routinely played such clips in law school classrooms to teach students the art of trial advocacy. But as a boy, what affected me as much as the brilliant lawyering was seeing the prosecution's evidence: actual footage of piles of naked corpses being bulldozed into large pits filmed by American and British soldiers after liberating Nazi concentration camps. The gruesome footage painfully revealed the extraordinary evil that people were capable of committing and the necessity of

courts of law to obtain justice. At the end of the film, Janning, after being sentenced to life in prison, admitted that it was the right and just decision, but claimed that he and the other Nazi judges had no idea that the outcome of their judicial decisions would be so horrific. Before leaving the bench, Judge Haywood responded: "You knew you were doing wrong the first time you condemned an innocent man."

To a young boy whose life revolved around books, Judge Haywood's words elevated the work of judges to rock star status. I didn't know any actual judges. But I knew they had the greatest and most sacred job in the world: they were champions of justice.

My opinion of judges has never changed. Indeed, as a practicing lawyer whose job is to try cases in courtrooms across the country, I know with even greater certainty that there is no more sacred profession. Unfortunately, budget shortfalls are making it increasingly difficult for judges; they are being forced to cut staff members and, in some instances, close their courtrooms in an effort to save money. Recently, each of the commissioners serving on the Orange County Superior Court received notice that budget cuts may result in as many as seventeen of twenty commissioners being laid off. This coincides with cutbacks in San Francisco and Los Angeles, where numerous commissioners and referees have been laid off.

Access to justice requires access to judges, including those judicial officers who assist the Superior Court in carrying out the many judicial duties needed in a county of this size and complexity. Seventeen judicial

officers perform extensive duties that, but for such service, would fall on the shoulders of already overburdened Superior Court judges, or perhaps will not be done at all. Moreover, this development is endemic of the crisis in trial court funding currently affecting the judiciary throughout the state of California. Accordingly, I have created an Access-to-Justice Task Force, spearheaded by a member of the OCBA Executive Committee, that will work on this issue and related access-to-justice matters with the Orange County Trial Lawyers Association and appropriate officials both here and in Sacramento to find solutions to this most vital problem. Justice must not be rationed.



Wayne R. Gross, the 2013 President of the Orange County Bar Association, is a founding partner of Greenberg Gross LLP, where he focuses on trial practice, complex civil litigation, and white collar defense. He previously served as Chief of the Orange County U.S. Attorney's Office and prosecuted cases of national and international significance. His email is wgross@ggtriallaw.com. Follow Wayne on Facebook: www.ocbar.org/PresidentFacebook.