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## ARTICLES

### JUDGES AT NUREMBERG: STETSON'S CONNECTION TO THE WAR CRIMES TRIALS

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#### *I. INTRODUCTION*

Between 1957 and 1959 I was a student at the Stetson University College of Law. Stetson then was not nearly the law school that it is today.<sup>1</sup> We had only six or seven full-time faculty for a student body of 235. Our library was quite small, containing only about 25,000 volumes.<sup>2</sup> Today we have about 200,000 volumes in our library<sup>3</sup> and have access to an almost infinite amount of information through the Internet.

In those days the law school offered very few courses. We had no seminars and no clinical courses. There was not yet a *Stetson Law Review*.

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\* © 2015, Bruce R. Jacob. All rights reserved. Dean Emeritus and Professor, Stetson University College of Law. This Article is based on remarks by the Author given at the Holocaust Museum in St. Petersburg, Florida, on November 20, 2013. The Author wishes to thank the *Stetson Law Review*, particularly Danielle Breiter and Michael Sepe.

1. I do not mean to be overly critical of Stetson. Law schools in the 1950s, generally speaking, were not nearly as good as they are today.

2. Email from Rebecca S. Trammell, Professor & Dir. Dolly & Homer Hand Library, Stetson Univ. College of Law, to Bruce R. Jacob, Professor & Dean Emeritus, Stetson Univ. College of Law, *Stetson Law Library Volumes* (Sept. 5, 2014, 5:51 PM) (copy on file with Author).

3. Telephone Interview with Rebecca S. Trammell, Professor & Dir. Dolly & Homer Hand Library, Stetson Univ. College of Law (Sept. 4, 2014).

But even with all of its deficiencies, for my classmates and me it was the ideal place to obtain a legal education. This was largely because two members of our faculty were absolutely extraordinary men, remarkable teachers and mentors.

One of them was our dean, Harold Leon Sebring, better known as "Tom" Sebring, and the other was James Tenney Brand. Sebring had been a justice and the chief justice of the Florida Supreme Court before becoming our dean. Brand had been a justice and the chief justice of the Oregon Supreme Court. So both were former state supreme court justices. And they had something else in common, something very significant: both had been appointed by President Truman<sup>4</sup> to be judges of the war crimes trials at Nuremberg, Germany, held from 1945 to 1948, following World War II. Each took a leave of absence from his position on his respective state supreme court to serve for a year as a judge in the war crimes trials.

The two of them met at Nuremberg and became friends. Later, in 1958, when Justice Brand retired from the Oregon Supreme Court, Sebring, who in 1955 had retired from the Florida Supreme Court and was now Stetson's dean, invited Justice Brand to teach at our law school. This is how Stetson happened to have two of the thirty Americans who were judges in the post-World War II Nuremberg war crimes trials<sup>5</sup> as members of our Stetson law faculty at the same time.

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4. Brand, for example, was appointed by Executive Order No. 9827, signed by the President on February 21, 1947. Appointment of the Members and the Alternate Member of a Military Tribunal Established for the Trial and Punishment of Major War Criminals in Germany, Exec. Order No. 9827, 12 Fed. Reg. 1215 (Feb. 22, 1947).

5. In the first of the Nuremberg war crimes trials there were four judges: one from Russia, one from Great Britain, one from France, and one from the United States, plus an alternate from each country. *Nuremberg Trial Proceedings Vol. 1: Charter of the International Military Tribunal*, THE AVALON PROJECT art. 2, <http://avalon.law.yale.edu/imt/imtconst.asp> (last visited Apr. 16, 2015) [hereinafter *Charter of the International Military Tribunal*]. In the twelve subsequent trials, prosecuted and tried by Americans in the American-occupied sector of Germany, there were three judges for each trial, but some judges served in more than one of those trials. Thus there were a total of twenty-nine judges for the twelve subsequent trials. TELFORD TAYLOR, NUERNBERG WAR CRIMES TRIALS, FINAL REPORT TO THE SECRETARY OF THE ARMY ON THE NUERNBERG WAR CRIMES TRIALS UNDER CONTROL COUNCIL LAW NO. 10, 118-19 (1949) [hereinafter FINAL REPORT]. At the first trial, former United States Attorney General Francis Biddle was the judge representing the United States, and United States Court of Appeals Judge John Parker was our alternate. TELFORD TAYLOR, THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR, 95 (1993) [hereinafter ANATOMY].

I will say a few words about their backgrounds. Then I will describe their roles at the Nuremberg war crimes trials. And, in these remarks, I will try to describe what each of them was like, as a teacher and as a person.<sup>6</sup>

I was in my early twenties when I knew them, while I was one of their students. Dean Sebring was about sixty years old at the time, and Justice Brand was in his early seventies. But despite the difference in age I got to know each of them quite well, and I considered each a good friend. In those days it was easy to form friendships with faculty members because the student body was small and we had so few faculty members.

I took or audited almost every course taught by each of them. This included Dean Sebring's two courses, Florida Constitutional Law and State and Local Taxation.<sup>7</sup> I took Justice Brand's course on Municipal Corporations for credit and audited his classes on Constitutional Law and Torts.<sup>8</sup>

The two of them were co-advisors of the school's moot court team that participated in the National Moot Court Competition. That team was comprised of my classmate Wallace Storey<sup>9</sup> and me. Justice Brand was our team's advisor regarding the writing of our brief for the competition, and Dean Sebring was our primary advisor with regard to the oral advocacy phase of our preparation. The two of them acted as a panel of appellate judges during our preparatory rehearsals for the oral argument. Over a period of weeks they spent hours listening to us rehearse for the oral argument, which was to take place in the Atlanta regionals of the national competition. They prepared us with questions and did an incredible job of instructing us on how to conduct an appellate oral argument.

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6. In providing this information, I have received the assistance of Thomas Bradstreet Brand, the son of Justice Brand, and Harold L. "Tom" Sebring, Jr., the son of Dean Sebring. Tom Brand's career has been as a lawyer in Salem, Oregon, and Tom Sebring has been a businessman in Tallahassee, Florida. Tom Brand provided me with biographical information and with numerous newspaper clippings pertaining to his father. Tom Sebring and I spoke about his father by telephone. I am greatly indebted to both for their invaluable assistance.

7. His courses were taught in the old courtroom, now Classroom H. It has been moved to the present location from the eastern part of the current classroom building.

8. Justice Brand taught Torts and Constitutional Law upstairs in an auditorium in the old library. The Municipal Corporations course was taught in the seminar room located above the entrance to the old library.

9. Wallace Storey became a lawyer and a state legislator in Polk County, Florida.



Author, Justice James Tenney Brand, and Wallace Storey (*left to right*) (Photo Credit: Author's Personal Collection)

Justice Brand traveled with Storey and me to Atlanta for the competition. We did not win,<sup>10</sup> but our lack of success was not the fault of our two faculty advisors. They were outstanding instructors and mentors to us. We learned much about appellate brief writing and oral advocacy from them.

## II. JUSTICE BRAND

Justice Brand was born in Oberlin, Ohio, on October 9, 1886.<sup>11</sup> He received his B.A. degree from Oberlin College in 1909.<sup>12</sup> While at Oberlin he was president of his class, president of the student senate, and twice captain of the college's intercolle-

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10. We were eliminated by the team from the University of Miami School of Law.

11. *James T Brand Biography*, OREGON.GOV, [http://www.oregon.gov/SOLL/Pages/ojd\\_historyjustice\\_biographies/j\\_t\\_brand\\_bio.aspx](http://www.oregon.gov/SOLL/Pages/ojd_historyjustice_biographies/j_t_brand_bio.aspx) (last visited Apr. 16, 2015).

12. *Id.*

giate debate team.<sup>13</sup> He loved Oberlin. For many years, when he was older, he served as a trustee of his college.<sup>14</sup> He was extremely proud of Oberlin and of the fact that he was able to serve as a trustee.<sup>15</sup>

While growing up in Ohio, Brand suffered from a severe sinus condition,<sup>16</sup> and when he graduated from Oberlin his doctors advised him that he might obtain relief from his medical problems by going to the western part of the United States, to a climate different from that of northern Ohio. So, after graduating from Oberlin he spent two years, between 1909 and 1911, as a forest ranger for the United States Forest Services in Oregon.<sup>17</sup>

In 1911, he entered the Harvard Law School. He twice won a scholarship at Harvard.<sup>18</sup> He graduated there with an LL.B. degree in 1914.<sup>19</sup>

He loved living in the state of Oregon, and after graduating from Harvard he returned there and entered the practice of law in the coastal town then called Marshfield. The name of the town was changed in 1944 to Coos Bay.<sup>20</sup> Beginning in 1914 he was a partner in the firm of Peck and Brand.<sup>21</sup> That partnership continued until 1927.<sup>22</sup> In 1916 he became the city attorney of

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13. The information regarding his activities while at Oberlin College comes from a newspaper article provided to the Author by Tom Brand, Judge Brand's son, from an unidentified Oregon newspaper. The article is entitled "Brand Cites Long Record of Service," and it was probably published in 1931, when Judge Brand was forty-five years old and a candidate for the Oregon Supreme Court (copy on file with Author). He lost that election, but later was appointed to the Oregon Supreme Court in 1941 by the governor. *James T Brand Biography*, *supra* note 11.

14. *ENCYCLOPEDIA OF BIOGRAPHY* 37 (Christine S. Nicholls ed., 1997).

15. I learned this from conversations with Justice Brand while I was his student, from 1958 to 1959.

16. The condition was so debilitating that at one point he endured surgery to open his sinus cavities. He told me this while I was his student, from 1958 to 1959.

17. While I was his student, he told me that he went west after graduating from college and worked as a forest ranger primarily for medical reasons. The purpose was to regain his health, and he found that the move west did improve his health.

18. *Supra* note 13 (This information was contained in the newspaper article mentioned.).

19. *James T Brand Biography*, *supra* note 11.

20. The change took place after a new charter, along with the name change, was approved by the voters at a special election held on December 28, 1944. Telephone Interview with Pat Granstrom, Reference Librarian, Coos Bay Pub. Library (Aug. 6, 2014).

21. *ENCYCLOPEDIA OF BIOGRAPHY*, *supra* note 14, at 37.

22. *Id.*

Marshfield, and he continued in that position for about ten years, until 1927.<sup>23</sup>

On July 13, 1916, he married Irene Morley. She had been born in Rocky River, Ohio, and was a graduate of the College of Wooster. Before marriage she had taught for four years in Ohio schools in East Liverpool and St. Mary's.<sup>24</sup> The couple had three children and four grandchildren.<sup>25</sup>

Although a native of Ohio, Mrs. Brand was as enraptured with the state of Oregon as her husband. She became involved in public affairs in her adopted state, serving as a member of the Marshfield City Council.<sup>26</sup> Also, she served on the boards of the Salem, Oregon Library and the Salvation Army in Salem, and she was a trustee of the local Presbyterian church.<sup>27</sup>

During those early years as a lawyer in Marshfield, Justice Brand served as a member, and later, as chairman, of the local school board.<sup>28</sup>

In 1927 the governor appointed him as a circuit judge.<sup>29</sup> Five years later, in 1932, he ran for a seat on the Oregon Supreme Court but was not successful.<sup>30</sup> From 1934 to 1935 he served as the president of the Oregon State Bar Association.<sup>31</sup> All of this took place while he was a circuit judge. Then, on May 14, 1941, he was appointed by the governor to the Oregon Supreme Court—an interim appointment, which lasted until the next election to be held a year later.<sup>32</sup> In 1942 he stood for election and was elected

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23. *Id.*

24. Nancy Osgood, *Stetson Campus Here Is Their New Home: James T. Brands Look Forward to School Opening*, ST. PETE TIMES, Sept. 1958 (copy on file with Author).

25. ENCYCLOPEDIA OF BIOGRAPHY, *supra* note 14, at 37.

26. The Brands lived on the Stetson campus while I was a student. Justice Brand allowed Mrs. Brand to audit his course on Municipal Corporations. I was one of the students in that course. It was a small enrollment course, with about twenty students, taught with all of us seated around a large table. I got to know her during those class sessions and learned much about her and Justice Brand.

27. Osgood, *supra* note 24.

28. ENCYCLOPEDIA OF BIOGRAPHY, *supra* note 14, at 37.

29. *Supra* note 13 (This information was contained in the newspaper article mentioned.).

30. This information comes from a newspaper article provided to the Author by Tom Brand, Judge Brand's son, from an unidentified Oregon newspaper. The article is entitled "About Judge Brand" and was published probably in 1934, seven years after he was first appointed as a circuit judge (copy on file with Author).

31. ENCYCLOPEDIA OF BIOGRAPHY, *supra* note 14, at 37.

32. *James T Brand Biography*, *supra* note 11.

by the people, and he was reelected every six years from then until his retirement in 1958, when he joined the faculty at Stetson.<sup>33</sup> From 1951 to 1952 he served as chief justice.<sup>34</sup>

In addition to serving as a trustee of Oberlin College for many years, he also was a trustee of Reed College in Oregon.<sup>35</sup> He received an honorary Doctor of Laws degree from Willamette University in 1948.<sup>36</sup>

Justice Brand was tall, about six feet in height, slender and bespectacled. He was very distinguished looking. He died in Phoenix, Arizona, on February 20, 1964, while vacationing there with his wife, Irene.<sup>37</sup>

### III. THE NUREMBERG WAR CRIMES TRIALS

The officials of the Nazi regime of Adolph Hitler, during the 1930s and 1940s, engaged in some of the most horrendous acts in all of recorded human history. They reduced Jews and Slavs to the legal status of "subhumans," to be exterminated or to be used as slaves to aid in the war effort.<sup>38</sup> They established concentration camps, in which opponents of the Nazi regime were confined.<sup>39</sup> They deported German Jews to Poland for extermination in death camps there.<sup>40</sup> They seized millions of men and women from the occupied countries of Europe and used them for forced labor in German farms, mines, and factories during the war.<sup>41</sup>

While the war was still in progress, the allies, England, France, the Soviet Union, and the United States, made the decision to try surviving Nazi war criminals following the war on four charges: (1) making war against the law of nations; (2) war crimes; (3) exploitation of the inhabitants of territory under military occupation; and (4) crimes against humanity.<sup>42</sup> An "Internationa-

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33. *ENCYCLOPEDIA OF BIOGRAPHY*, *supra* note 14, at 37; *James T Brand Biography*, *supra* note 11.

34. *ENCYCLOPEDIA OF BIOGRAPHY*, *supra* note 14, at 37.

35. *Id.*

36. *Id.*

37. *James T. Brand, Ex-Justice Dies*, *THE STATESMAN* (Salem, Or.), Feb. 29, 1964, at 1 (copy on file with Author).

38. *ANATOMY*, *supra* note 5, at 21.

39. *Id.*

40. *Id.* at 24.

41. *Id.*

42. *FINAL REPORT*, *supra* note 5, at 64-65.

tional Military Tribunal" was established to try twenty-four of the leading Nazis in a single trial.<sup>43</sup> Nuremberg, Germany, was the place chosen for that major trial, probably because there was a large enough building in that city that was undamaged by the war, and that "The Palace of Justice" was suitable for the trial.<sup>44</sup> That trial began immediately following the war, in late 1945, and ended on October 1, 1946.<sup>45</sup> The defendants before this war crimes tribunal included such Nazis as Hermann Goering, Commander in Chief of the German Air Force and Chief of War Economy; Joseph Goebbels, Minister of Propaganda; Heinrich Himmler, head of the "SS" and the Nazi Party's police, intelligence, and security organizations, including concentration and death camps; Fritz Sauckel, head of the forced labor program; Albert Speer, director of the armaments program; Rudolf Hess, deputy to Hitler for Nazi Party matters; Admiral Erich Raeder; Joachim von Ribbentrop, Foreign Minister; Admiral Karl Doenitz; and Alfred Jodl, Chief of Operations of the Military Staff.<sup>46</sup>

There were four judges and four alternates for the trial from the allied countries of Great Britain, France, the Soviet Union, and the United States.<sup>47</sup> President Truman appointed Francis Biddle, former United States Attorney General, to be the American judge, and United States Supreme Court Justice Jackson to be the American prosecutor.<sup>48</sup>

Of the twenty-four men indicted, twelve were sentenced to death and seven to prison terms. Three defendants were acquitted, and two defendants did not proceed to trial.<sup>49</sup>

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43. U.S. Holocaust Mem'l Museum, *International Military Tribunal at Nuremberg*, HOLOCAUST ENCYCLOPEDIA, <http://ushmm.org/wlc/en/article.php?ModuleId=10007069> (last updated June 20, 2014).

44. FINAL REPORT, *supra* note 5, at 19.

45. *Id.* at 13.

46. ANATOMY, *supra* note 5, at 25, 89–90.

47. *Charter of the International Military Tribunal*, *supra* note 5, art. 2.

48. ANATOMY, *supra* note 5, at 39, 94–95.

49. *Nuremberg Trials*, HISTORY, <http://www.history.com/topics/world-war-ii/nuremberg-trials> (last visited Apr. 16, 2015) (explaining that two of the men were never tried; one was declared medically unfit and one committed suicide before the trial began).



#### IV. THE SUBSEQUENT TWELVE TRIALS

In addition to the high-ranking Nazis who were tried by the first Nuremberg war crimes tribunal, the International Military Tribunal, there were others who held lesser positions in the Nazi regime who the allies believed deserved punishment for their conduct in the years leading up to and during World War II. A month and a half after the first Nuremberg trial began, in late 1945, the four nations occupying Germany adopted Allied Control Law Number 10, which formed the basis for the subsequent trials that followed the trial before the International Military Tribunal.<sup>50</sup> The International Military Tribunal ended its work in 1946, and the subsequent proceedings took place beginning in December 1946 and continued throughout 1947 and early 1948.<sup>51</sup> These subsequent proceedings tried persons such as diplomats, doctors, lawyers, businessmen, military leaders, and judges who were not considered the most serious offenders, but who held significant positions in the Third Reich and allegedly had engaged in significant international crimes.<sup>52</sup>

Each of the four occupying powers—Great Britain, the United States, France, and the Soviet Union—were allowed under Control Council Law Number 10 to establish tribunals within their respective zones of Germany for the purpose of trying these additional Nazis.<sup>53</sup> The zone commanders of each section had the discretion to determine the procedures to be followed for trials in their respective zones.<sup>54</sup> Each zone commander was empowered to arrest the suspected war criminals.<sup>55</sup> Many of the suspects who had taken part in the medical experiments on concentration camp inmates were being held by the Americans and the British. Control Council Law Number 10 allowed exchanges among the four occupying powers.<sup>56</sup> By mutual agreement the British transferred some SS officers and military doctors who were suspected of med-

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50. FINAL REPORT, *supra* note 5, at 6–7.

51. *See id.* at 118–19 (providing a tabulated schedule of trials held before the International Military Tribunal).

52. *Id.* at 159.

53. *Id.* at 6–9.

54. *Id.* at 9.

55. *Id.* at 251.

56. *Id.* at 252.

ical atrocities to the American Zone, "so that all medical suspects could be tried in a single proceeding" within the American Zone.<sup>57</sup> The trial of those doctors and Nazi medical personnel in the American Zone became known as the "Medical Case," and Justice Sebring was one of the three judges in that trial.<sup>58</sup>

The American Zone of occupation consisted of Southern Germany, which included Nuremberg, where the International Military Tribunal earlier had tried the most significant Nazi officials.<sup>59</sup> It was decided that the subsequent twelve trials in the American Zone should take place in that same building, the "Palace of Justice."<sup>60</sup> The original trial's courtroom was used again, and five more courtrooms were constructed at the Nuremberg Palace of Justice for the subsequent trials.<sup>61</sup> A simultaneous interpretation system was incorporated into these courtrooms in the Palace of Justice so that all participants could hear the proceedings in German or in English.<sup>62</sup>

The Medical Case was considered "Case Number One" of the subsequent twelve cases.<sup>63</sup> The person in the Nazi regime who had been the equivalent of the attorney general in the United States and other prosecutors and judges were prosecuted in "Case Number Three," in what has become known as the "Justice Case."<sup>64</sup> Judge Brand was the presiding judge in that case.<sup>65</sup>

The prosecutor representing the United States in the trials at Nuremberg, appointed by President Truman, was Robert H. Jackson, who was a justice of the United States Supreme Court.<sup>66</sup> He took leave from the Supreme Court for this purpose.<sup>67</sup> On March 29, 1946, Justice Jackson announced that General Telford Taylor would serve as deputy chief of counsel.<sup>68</sup> Then, as Justice

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57. *Id.* at 160 n.81.

58. *Id.* at 162.

59. *History Timeline*, U.S. ARMY EUR., <http://www.eur.army.mil/organization/timeline.htm> (last visited Apr. 16, 2015).

60. FINAL REPORT, *supra* note 5, at 20.

61. *Id.*

62. *Id.*

63. *See id.* at 162 (explaining that the Medical Case was the first to open and the second case to close).

64. *Id.* at 168.

65. *Id.* at 170.

66. ANATOMY, *supra* note 5, at 43-45.

67. *Id.*

68. FINAL REPORT, *supra* note 5, at 11.

Jackson resigned on October 17, 1946, to return to the United States Supreme Court after the International Military Tribunal had concluded its prosecutions of leading Nazis, the American military governor, General Joseph T. McNarney, appointed General Telford Taylor as chief of counsel for the remaining twelve war crimes trials.<sup>69</sup>

Lieutenant General Lucius D. Clay was the deputy military governor of the American Zone in Germany.<sup>70</sup> Convictions by the tribunals were final and not reviewable under Control Council Law Number 10, but Lieutenant General Clay had the authority to reduce sentences.<sup>71</sup>

Lieutenant General Clay had the authority to select the judges and alternates for the twelve subsequent tribunals, and submit their names to the President for appointment.<sup>72</sup> Each tribunal was to consist of three members, plus an alternate.<sup>73</sup> Also, Clay issued orders designating one judge on each panel as the presiding judge.<sup>74</sup>

Military Government Ordinance Number 7 required the judges to "be lawyers who have been admitted to practice, for at least five years, in the highest courts of one of the United States or . . . in the United States Supreme Court."<sup>75</sup> The War Department<sup>76</sup> recruited judges for these positions.<sup>77</sup> They were invited to serve, and their names were submitted to the military governor.<sup>78</sup> Upon recommendation of the military governor, the President made each appointment.

After Chief Justice Harlan Fiske Stone died, President Truman, on June 21, 1946, appointed Fred M. Vinson chief justice of the United States Supreme Court.<sup>79</sup> Some federal judges were invited by the War Department to become judges for the

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69. *Id.* at 13.

70. ANATOMY, *supra* note 5, at 111 (referring to position as deputy minister governor).

71. *Id.* at 490; FINAL REPORT, *supra* note 5, at 156.

72. FINAL REPORT, *supra* note 5, at 157.

73. ANATOMY, *supra* note 5, at 155; FINAL REPORT, *supra* note 5, at 29.

74. FINAL REPORT, *supra* note 5, at 157.

75. *Id.* at 29 (internal quotations omitted).

76. Now the Department of Defense.

77. FINAL REPORT, *supra* note 5, at 34.

78. *Id.* at 35.

79. *Fred Vinson Biography*, BIO., <http://www.biography.com/people/fred-vinson-40076#synopsis> (last visited Apr. 16, 2015).

twelve subsequent Nuremberg tribunals, and several of them accepted the invitations.<sup>80</sup> However, Chief Justice Vinson, using his supervisory powers over the lower federal courts, prohibited them from participating, and these judges then had to retract their acceptances.<sup>81</sup> Chief Justice Vinson apparently had decided that these federal judges were needed here in the United States, and he did not want them taking leave from their positions to travel to Europe to preside over these trials when it was not known how long the trials would last. Vinson's decision could have been motivated by a desire to avoid the kind of backlog that had developed on the Supreme Court while Justice Jackson had been at Nuremberg as the American prosecutor before the International Military Tribunal in 1945 and 1946. When Justice Jackson returned to the Supreme Court, he "had piles of important work to do."<sup>82</sup> His one-year absence must have imposed a hardship on the Supreme Court, in terms of getting its work done.

State judges, on the other hand, were not prohibited from becoming judges for the subsequent Nuremberg war crimes trials in the American Zone. There were twenty-nine judges, not including alternates, who served as members of the three-judge panels that were assembled at Nuremberg under Control Council Law Number 10.<sup>83</sup> These judges included fourteen, such as Brand and Sebring, who had been justices of the highest courts of their states.<sup>84</sup> Justice Sebring was selected as one of the judges for the Medical Case. Why? He may have been chosen because "of the need for geographical balance—he was from Florida, a southern state."<sup>85</sup> Also, he had served in the United States Army in World War I with great distinction.<sup>86</sup> His exemplary military record may have been a factor in his selection. When he was appointed by the

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80. FINAL REPORT, *supra* note 5, at 157 n.73.

81. *Id.*

82. ANATOMY, *supra* note 5, at 571.

83. FINAL REPORT, *supra* note 5, at 118–19. This total does not include Judge Marshall, who resigned almost immediately due to health problems.

84. *Id.* at 157; *id.* at 157 nn.72–73.

85. Bruce R. Jacob, *Remembering a Great Dean: Harold L. "Tom" Sebring*, 30 STETSON L. REV. 71, 112 (2000).

86. *Id.* at 76, 78.

President, he took a leave of absence without pay from his position on the Supreme Court of Florida.<sup>87</sup>

Justice Brand told me that he thought he had been selected for the Justice Case because Chief Prosecutor General Telford Taylor had wanted a judge from the western part of the United States who had received his legal education at an Ivy League law school.<sup>88</sup> Brand, a justice of the Oregon Supreme Court, had received his law degree from the Harvard Law School.<sup>89</sup>

### V. THE JUSTICE TRIAL

The third of the twelve subsequent Nuremberg trials is known as the Justice Case because those prosecuted were judges, prosecutors, or ministerial officers of the Nazi judicial system.<sup>90</sup> The official name of the case was *United States v. Josef Alstoetter*.<sup>91</sup> There were sixteen defendants in the case.<sup>92</sup> Nine had been members of the Third Reich's Ministry of Justice, and the other seven were justices of special courts or "people's" courts.<sup>93</sup> They were charged with war crimes and crimes against humanity.<sup>94</sup> The trial took place between March 5 and December 4, 1947.<sup>95</sup>

At the very outset of that trial, Carrington T. Marshall, former Chief Justice of the Supreme Court of Ohio, was the presiding judge.<sup>96</sup> However, he resigned almost immediately as the proceedings began because of poor health.<sup>97</sup> Justice Brand then became the presiding judge for the case.<sup>98</sup> The other two judges were Judge Mallory B. Blair of Texas and Justin W. Harding, "former judge in Alaska and Assistant Attorney General of

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87. *Id.* at 112.

88. Justice Brand told me this in 1958 or 1959, while I was a student of his at Stetson.

89. *James T Brand Biography*, *supra* note 11.

90. FINAL REPORT, *supra* note 5, at 168.

91. *Id.*

92. Doug Linder, *The Subsequent Nuremberg Trials: An Overview*, LAW.UMKC.EDU, <http://law2.umkc.edu/faculty/projects/ftrials/nuremberg/subsequenttrials.html> (last visited Apr. 16, 2015).

93. *Id.*

94. *Id.*

95. *Id.*

96. FINAL REPORT, *supra* note 5, at 170.

97. *Id.*

98. *Id.*

Ohio.”<sup>99</sup> Judge Harding originally was the alternate for the case.<sup>100</sup>

To establish that these crimes had taken place, the prosecution showed that the judiciary in Germany had become “Nazified.”<sup>101</sup> The rule of law had been forgotten.<sup>102</sup> Among other things, defendants were held responsible for implementing and furthering the Nazi racial purity program through racial and eugenic laws.<sup>103</sup> There were two standards of justice, with a special type for Jews.<sup>104</sup> One Jew was found guilty of hoarding eggs in wartime and was sentenced to two-and-a-half years of confinement. Later, on a directive from one of Hitler’s aides, the sentence was changed to the death penalty.<sup>105</sup> Another Jew, sixty-eight-year-old Leo Katzenberger, was accused of violating the law for “The Protection of German Blood” for having intercourse with a nineteen-year-old non-Jewish girl. She had been seen sitting in his lap. Both denied that anything of a sexual nature had taken place. She considered him a friend, a fatherly or grandfatherly figure in her life. But because the defendant was Jewish, the case was transferred to a “special” court, and he was given a life sentence, later changed to the death penalty.<sup>106</sup>

The defendants in the Ministry of Justice had participated in drafting orders that discriminated against Jews, Poles, and others from occupied territories. Some defendants had issued orders under which persons in occupied territories were taken from their homes and brought into Germany for secret trials by “special courts.” These trials in Germany were absolute travesties of the judicial process.<sup>107</sup>

The tribunal found ten of the defendants in the case guilty. Four of the ten received sentences of life imprisonment, and six

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99. *Id.*

100. *Id.*

101. *ANATOMY*, *supra* note 5, at 21.

102. *See id.* (explaining that in Germany the Judiciary was “Nazified,” and Hitler, as Supreme Judge, had “the power to direct the imprisonment or execution of individuals with no semblance of a trial”).

103. Beth Van Schaack, *Crimen Sine Lege: Judicial Lawmaking at the Intersection of Law and Morals*, 97 GEO. L.J. 119, 125 n.15 (2008).

104. St. Petersburg Times, or Independent, 1960, p. 18A (Interview of Justice Brand at Stetson).

105. *Id.*

106. Doug Linder, *supra* note 92.

107. FINAL REPORT, *supra* note 5, at 170.

received prison sentences ranging from five to ten years. Four were acquitted. In one of the cases the defendant died before a verdict was reached, and in another case a mistrial was declared due to a serious illness.<sup>108</sup>

The tribunal made clear in its judgment or opinion that international law was applicable. International law is like the common law in that it is not based on statutory law and instead is a body of law arising out of custom, which grows, progresses, and expands "to meet the exigencies of changing conditions."<sup>109</sup> International law is law that is accepted by civilized nations.<sup>110</sup>

The panel declared in the opinion that it was an international tribunal applying rules of international law.<sup>111</sup> One problem it had to confront was whether the charges against the defendants constituted *ex post facto* allegations. The panel answered this argument beginning with the following language:

As applied in the field of international law that principle requires proof before conviction that the accused knew or should have known that in matters of international concern he was guilty of participation in a nationally organized system of injustice and persecution shocking to the moral sense of mankind.<sup>112</sup>

The justice panel found that the guilty defendants had participated in "a nationwide governmentally organized system of cruelty and injustice, in violation of the laws of war and of humanity, and perpetrated in the name of the law by the authority of the Ministry of Justice, and through the instrumentality of the courts."<sup>113</sup>

A principal defense to the charges was that the defendants were merely following orders—they had to obey and enforce Hitler's orders even if they did not want to do so. The justice panel determined that although this might have been a valid defense within the German legal system, it was not a valid defense against allegations of crimes based on international law.<sup>114</sup>

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108. *Id.* at 169 n.108; *id.* at 174.

109. *Id.* at 170.

110. *Id.*

111. *Id.* at 171.

112. *Id.*

113. *Id.* at 172.

114. *Id.*

Our government and the governments of our allies were criticized for their participation in the Nuremberg trials. Dorothy Thompson wrote newspaper articles criticizing the events at Nuremberg. She said, for example, "What makes me angry and the trials a farce is not that there is post-facto justice, but that though three years have elapsed since the war, there is still no law against waging any kind of war."<sup>115</sup> She lambasted the allies for making it a crime of international law to engage in "aggressive war" or in the "unlawful use of war," which were charges tried before the International Military Tribunal and in some of the subsequent twelve trials. She pointed out that in the Russo-German pact, at the outset of World War II, the Soviet Union had actually participated with Hitler in conquering and dividing Poland, the Baltic States, and Romania between the Soviet Union and Nazi Germany.<sup>116</sup> Yet Francis Biddle, representing the United States as a member of the International Military Tribunal, sat side-by-side with a Russian judge, trying Germans for the very same crimes that had been committed by Stalin and officials of the Soviet Union.<sup>117</sup>

Criticism of the proceedings also came from an unlikely source—Judge Charles F. Wennerstrum, an Iowa Supreme Court justice who was the presiding judge in subsequent Case Number Seven, in which certain German military commanders were charged with crimes for the taking and killing of hostages in the Balkans. Even though he participated in the trial, and in convicting and sentencing the defendants in the "Hostages Case," after the trial concluded he criticized Telford Taylor and the other American prosecutors for being vindictive and unfair.<sup>118</sup> Also, he said that defense counsel were not provided documentary evidence that was used against the defendants unless prosecutors decided that the evidence would be material to the defense.<sup>119</sup> Furthermore, he was upset that Telford Taylor had tried to call a meeting of the presiding judges to persuade them to rescind a

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115. Dorothy Thompson, *U.N. Impotent to Outlaw War*, newspaper article (D.C.), Feb. 8, 1947 or 1948 (copy on file with Author).

116. *Id.*

117. *Id.*

118. Hal Foust, *Jurist Raps 'Flop' of High Motives*, THE OREGONIAN, Feb. 23, 1948 (copy on file with Author).

119. *Id.*



rule they had adopted to the effect that when the prosecution introduced an excerpt from a document as evidence they had to make that entire document available to defense lawyers beforehand.<sup>120</sup> He considered this disgraceful conduct on the part of Taylor. For a prosecutor to call an extrajudicial meeting of judges in order to persuade them to decide an important issue in the cases they are trying, without the participation of defense attorneys, was wrong.

Additionally, Judge Wennerstrum was concerned about the fact that some defendants had been held in confinement for more than two-and-a-half years and had been repeatedly interrogated during that time. The lack of an appeal process for convicted defendants likewise offended him.<sup>121</sup>

Justice Brand responded to Wennerstrum's criticism in newspaper articles and speeches. In a speech to the American Bar Association's Section on International and Comparative Law, he pointed out that of the thirty American judges who had participated in all of the cases at Nuremberg, Wennerstrum was the only one who had anything critical to say regarding the procedures used. Brand also said:

No defendant tried in the criminal courts of the United States has received a trial in which the court and prosecution have so completely protected his every right as did the defendants at [Nuremberg]. . . . [I]f we had followed the old methods . . . we would have shot all the defendants—including [twenty] who were found not guilty.<sup>122</sup>

In a newspaper article in 1948 titled *Oregon Jurist Blasts Iowan*, Justice Brand said that a permanent court under the United Nations would represent the ideal procedure for prosecuting and deciding the guilt of defendants for war crimes.<sup>123</sup> But the United Nations had not established a court for that purpose.<sup>124</sup> He said, further, that persons violating the laws and customs of war

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120. *Id.*

121. *Id.*

122. *War Crimes Trials Upheld in Bar Talk*, newspaper article, date unknown (copy on file with Author).

123. *Oregon Jurist Blasts Iowan: Brand Raps Judge's Attitude*, THE OREGONIAN, Feb. 24, 1948, at 2A.

124. *Id.*

had been tried by military commissions or court martial proceedings constituted by the victor throughout the civilized world and for many years.<sup>125</sup> To him, Wennerstrum's criticisms were unwarranted.<sup>126</sup>

Justice Brand thought very highly of Telford Taylor. I am sure that criticisms of Taylor's role as prosecutor bothered him.<sup>127</sup>

## VI. JUSTICE BRAND AT STETSON

In 1958, at the age of seventy-two, Justice Brand resigned from his position on the Oregon Supreme Court and joined the faculty of the Stetson University College of Law in Gulfport, Florida, adjacent to St. Petersburg. He came at the invitation of his friend and colleague during the Nuremberg trials, Tom Sebring, the relatively new dean of the law school.<sup>128</sup> Brand and his wife, Irene, lived in an apartment on the first floor of the northwest portion of the campus quadrangle. The buildings that surround the quadrangle had been built as a hotel called the "Rolyat" during the 1930s.<sup>129</sup>

"Judge Brand," as we called him, was an exceptional classroom teacher. And, because he lived and worked on the campus, his students got to know him very well as a teacher, mentor, and friend. His favorite subject was Constitutional Law, and I am quite sure he knew as much about the subject as any then-living

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125. *Id.*

126. *Id.*

127. Several times during 1958 and 1959, while I was a student, Judge Brand made laudatory comments about Taylor to me or in my presence. Clearly he thought that Taylor was an excellent, fair prosecutor and an outstanding person.

128. Sebring had become dean in 1955.

129. Jack Taylor was the developer who built the hotel, and "Rolyat" is "Taylor" spelled backwards. Dean Sebring and his wife, Elise, lived on Snell Isle, in the northeast part of St. Petersburg. When the law school, founded in Deland, Florida, in 1900, moved to Gulfport in 1954, taking over the old Rolyat Hotel as its campus, Dean Sebring, who became dean in 1955, and the faculty decided to make Stetson as much like the English Inns of Court as possible. Students (I was one of them) lived in the old hotel rooms, and the idea was that at least some of the faculty would live in the former hotel in rooms combined into apartments. Judge and Mrs. Brand lived there. The hotel dining area is now the cafeteria and dining area for the law school, and students and faculty ate together and met and talked together at every opportunity. Also, banquets called "Inns of Court" dinners were held periodically at which students, faculty, and local lawyers sat together to hear speeches and programs by judges and lawyers on various aspects of the practice of law and the legal profession.

scholar, lawyer, or judge. He had briefed every case decided by the Supreme Court on a large index card, and he kept these cards in boxes and files in his office. He had developed a system for accessing the cases that he needed in his research from these index cards.

He was one of the hardest-working persons I have ever known. He was superbly prepared for every class. He worked long hours preparing for each of his classes. I can recall driving onto campus at about midnight one night and seeing the light on in his office.

While he was teaching at Stetson, Justice Brand would hold meetings with groups of interested students to discuss his experiences as a judge at Nuremberg. I attended one of these sessions. My recollection is that about fifteen students attended. Judge Brand obviously was sensitive to the criticism of the Nuremberg trials by those who argued that defendants were convicted under laws that did not exist at the time they engaged in the acts that comprised their offenses. These critics charged that the "laws" relied upon by the prosecution were *ex post facto* laws, adopted *after* the crimes had taken place, and were retroactive in their application. In the session with students that I attended, Judge Brand strongly rejected these arguments. Among other things, he talked about a case decided by a court in Europe in the 1400s that made crimes against humanity—one of the charges against the Nuremberg defendants and the most significant of the charges in the Justice Case—legitimate crimes under international law. This provided precedent, already centuries old in the 1930s, for charging and convicting the defendants of crimes against humanity. According to him, this precedent showed that this was a recognized crime in international law at the time the Nazis took power.

In my research I think I have found the case to which Justice Brand had referred. It is the case of Peter Von Hagenbach, which took place in Europe in the year 1474. Von Hagenbach was a Dutch mercenary who was hired by the Duke of Burgundy to command troops that occupied the city of Breisach, Germany.<sup>130</sup>

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130. Lloyd Duhaime, 1474: *The Peter Von Hagenbach Trial, the First International Criminal Tribunal*, DUHAIME.ORG (Apr. 21, 2013), <http://www.duhaime.org/LawMuseum/>

The Duke had ordered Von Hagenbach to collect very high taxes or exactions from the residents of the city.<sup>131</sup> When the populace resisted, the Duke ordered Von Hagenbach to direct his troops to sack, pillage, rape, and then burn the city.<sup>132</sup> The result was so horrendous that Von Hagenbach was accused of “crimes against the laws of God and humanity” and was tried before what has been described as the first international criminal law tribunal.<sup>133</sup> The tribunal consisted of twenty-eight judges from the twenty-six member states of the Holy Roman Empire—such states as Alsace, Bohemia, Luxembourg, Milan, the Netherlands, and Switzerland.<sup>134</sup> In his defense, Von Hagenbach argued that he had only followed orders, but the tribunal convicted him, and he was executed.<sup>135</sup> This decision established that “crimes against humanity” is an offense under international law.<sup>136</sup> Also, this was the first case in which the defense of following orders was rejected by a court.<sup>137</sup>

#### VII. THE PLAY AND MOVIE, JUDGMENT AT NUREMBERG

In 1957 Abby Mann wrote the play *Judgment at Nuremberg*, which was based on the Justice Trial over which Justice Brand had presided.<sup>138</sup> That play and the later movie were about the presiding judge, the panel and prosecutor, and the defendants in that case. In 1959, the television program *Playhouse 90* decided to put the play *Judgment at Nuremberg* on television.<sup>139</sup> At that time Justice Brand was teaching at Stetson, and he and his wife, Irene, were living in the apartment on the Stetson Law School campus. Those of us who lived in the dormitory arranged to have

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LawArticle-1563/1474-The-Peter-Von-Hagenbach-Trial-The-First-International-Criminal-Tribunal.aspx.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. ABBY MANN, *JUDGMENT AT NUREMBERG: A PLAY BY ABBY MANN* (New Directions Publ'g 2002).

139. *Playhouse 90: Judgment at Nuremberg*, IMDB, <http://www.imdb.com/title/tt0675583/> (last visited Apr. 16, 2015).

a small black and white television set<sup>140</sup> placed in the hallway at the entry to the cafeteria. The set was at the northeast corner of that small hallway area. We put two comfortable chairs directly in front of the TV set for the Brands, and a dozen or more of us who were his students crowded into folding chairs behind the two of them.

The famous actor Claude Rains played the part of Judge Brand. Brand was called "Judge Dan Haywood" in the play.<sup>141</sup> Rains had come to the Stetson campus before the filming of the play for *Playhouse 90* and had spent two days following Justice Brand around the campus, observing his speech patterns and mannerisms. In the television program Claude Rains sounded a lot like Justice Brand. Brand taught his classes while seated, and he tended to tilt to one side while speaking. Claude Rains copied this habit of Brand's, as well as Brand's patterns of speech. As far as we could tell that evening, the Brands enjoyed watching the play.

The play was shown on *Playhouse 90* early in 1959. In December 1961, the movie version of the play was released by United Artists. It also was entitled *Judgment at Nuremberg*, with an actor even more famous than Claude Rains this time playing the part of Justice Brand. This actor was Spencer Tracy. Brand's character was fictionalized—he was called "Judge Dan Haywood," and he supposedly was from the state of Maine, rather than Oregon. Burt Lancaster played the role of the fictional key defendant in the case, named "Ernst Janning." Richard Widmark played the part of General Telford Taylor, the chief prosecutor, although his fictional name was "Colonel Parker." Werner Klemperer was another of the three judges in the case. Maximilian Schell was a German defense attorney. Marlene Dietrich was the widow of a German general who had been executed for the war crimes, and Judy Garland and Montgomery Clift were witnesses in the case.<sup>142</sup> It truly was an "all-star" cast.

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140. All TV sets in those days were small by today's standards, and there were not any color sets yet available.

141. *Playhouse 90: Judgment at Nuremberg, Full Cast & Crew*, IMDB, [http://www.imdb.com/title/tt0675583/fullcredits?ref\\_=tt\\_ov\\_st\\_sm](http://www.imdb.com/title/tt0675583/fullcredits?ref_=tt_ov_st_sm) (last visited Apr. 16, 2015).

142. JUDGMENT AT NUREMBERG (United Artists 1961).

A newspaper article in late 1961 stated that the script for the play was originally prepared by Abby Mann "with the cooperation of Oregon's former Justice Brand."<sup>143</sup> In writing the movie script, "Mann made use of Judge Brand's voluminous files, transcripts[,] and correspondence."<sup>144</sup>

I can recall that Judge Brand was upset with scenes in the movie in which Spencer Tracy had conversations outside the courtroom with Colonel Parker and Marlene Dietrich in which words were spoken which could have influenced Tracy's character's thinking about the case. Nothing like this happened in the actual case, and to Justice Brand it obviously would have been unethical for a judge to speak with an interested person or with the prosecutor about the case outside the courtroom. Also, Marlene Dietrich played the widow of an executed German general who supposedly had owned the home where Spencer Tracy was housed in Nuremberg during the Justice Trial. The two engaged in conversation in the movie, but Brand stated in a newspaper article that "Miss Dietrich just never happened."<sup>145</sup> He also said in the article that he and Mrs. Brand lived in a comfortable home in Nuremberg during the trial, which lasted almost a year, but not in "the lavish dwelling place depicted on the screen."<sup>146</sup>

Brand was asked "to go to Hollywood and act as an advisor-critic during the filming of the picture" but declined to do so "due to the introduction of a feminine character [probably Marlene Dietrich] 'who never existed,' and certain other deviations from the facts."<sup>147</sup> Brand told a reporter that because the picture represented a "symbolic case, with truth in the air, but many instances of dramatic license taken,' he could not ethically appear to endorse it as 'a factual, documentary account of events as they actually took place.'"<sup>148</sup> He said, "Don't misunderstand me, . . . this is a great play, with fine performances, and the spirit is true. However, the characters are garbled in some instances, and the

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143. Ruth Michelle, *Former Circuit Judge James Brand Is Portrayed in Judgment at Nuremberg*, THE WORLD, Oct. 25, 1961, at 16 (copy on file with Author).

144. Phyllis Lauritz, *Film Portrays Oregon Judge Who Heard Nuernberg Trials*, THE OREGONIAN, Sept. 20, 1961 (copy on file with Author).

145. *Id.*

146. *Id.*

147. Michelle, *supra* note 143.

148. Lauritz, *supra* note 144.

facts are not shown as they were.”<sup>149</sup> In the place of Justice Brand, Dean Sebring acted as the consultant in the making of the movie. I am fairly certain that he was recommended for that job by his friend, Justice Brand. Brand felt that he could not conscientiously act as the consultant and thereby endorse the Abby Mann version of the Justice Trial, but since Sebring had not taken part in that trial, and was not personally familiar with the facts in that case, he could conscientiously act as consultant with regard to the layouts of the courtrooms in the Palace of Justice, the clothing worn by the participants, living conditions in Nuremberg at the time, and such. In acting as consultant he was not endorsing the facts as presented in the movie. Instead he was trying to make the setting and the characters appear as authentic as possible, without endorsing the fictional version of the trial as genuine.

Sebring, by the way, had a sense of humor about his role in the filming of the movie. Shortly afterward, one of his students asked him what he enjoyed most about Hollywood and being the consultant for the movie. His answer, without any hesitation, was “Marlene Dietrich.”<sup>150</sup>

Two portions of the movie, although fictional, were loosely based on actual portions of the Justice Trial. Burt Lancaster played a fictional character named Ernst Janning, and that character was based on Franz Schlegelberger, who had been the director of the Nazi Ministry of Justice.<sup>151</sup> Also, the part of the movie that dealt with the elderly Jewish man who allegedly had a relationship with a young Jewish woman was based on the real life Katzenberger case that had taken place in a Nazi court. Katzenberger had been put to death in 1935. In the movie it is called the “Feldenstein” case.<sup>152</sup>

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149. *Id.* (internal quotations omitted).

150. Jacob, *supra* note 85, at 170.

151. Sean Bradley, *Stanley Kramer's Judgment at Nuremberg*, LAW.UMKC.EDU, <http://law2.umkc.edu/faculty/projects/ftrials/nuremberg/judgmentatnuremberg.html> (last visited Apr. 16, 2015); Linder, *supra* note 92.

152. Michael Asimow, *Judges Judging Judges—Judgment at Nuremberg*, PICTURING JUSTICE (Aug. 1998), <http://usf.usfca.edu/pj/articles/Nuremberg.htm>.

## VIII. JUSTICE/DEAN SEBRING

Dean Sebring was born March 9, 1898, in Olathe, Kansas.<sup>153</sup> His paternal grandfather had fought for the Union, and his maternal grandfather for the Confederacy.<sup>154</sup> His mother and father divorced when he was six or seven years old. He and his mother and brother moved close to Gardner, Kansas, where he grew up on his mother's family farm. His father died when he was twelve years old. His early education was in a rural schoolhouse. His mother remarried a lawyer and newspaper owner in Gardner, and Sebring went to high school in Gardner, a very small town. From an early age he was an outstanding athlete, playing football while in high school. He also was a high school track star.<sup>155</sup>

After high school, in 1916, Sebring went to northwestern Canada, where he worked on a ranch. Soon thereafter the United States entered World War I, and Sebring enlisted in the United States Army. After training in this country, he was sent to France, where he spent thirteen months in combat.<sup>156</sup>

He was a noncommissioned officer. In one of the battles he commanded several .75 millimeter guns. His guns had been lobbing rounds at the oncoming enemy. But when the Germans were close and it appeared that his position was about to be overrun, he ordered the men to lower the trajectory of the guns and shoot directly at the Germans. This stopped them from breaching the allied line.<sup>157</sup>

Sebring was highly decorated for his bravery in action. He was given two awards for heroism by the French government<sup>158</sup> and was awarded the Silver Star with oak leaf cluster by our government. The oak leaf cluster indicates that he was awarded the Silver Star twice.<sup>159</sup> When asked what he had done to deserve these awards he said, "I don't know[,] . . . just by staying alive, I guess. My unit suffered 130 percent casualties. Every 30 days

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153. 3 W.T. CASH, *THE STORY OF FLORIDA* 10 (1938). Much of the information about Dean Sebring that follows can be found in Jacob, *supra* note 85.

154. Jacob, *supra* note 85, at 74.

155. Telephone Interview with Tom Sebring, Jr. (Nov. 12, 1999).

156. Jacob, *supra* note 85, at 76.

157. Telephone Interview with Tom Sebring, Jr. (Mar. 17, 2000).

158. Jacob, *supra* note 85, at 78 (the Croix de Guerre with a silver star and the Corde de Fourragere).

159. *Id.*



they [would] come around and give a medal to anyone still alive."<sup>160</sup> He was exposed to mustard gas poisoning, and he suffered from the effects of that poisoning for many years following the war.<sup>161</sup>

His nickname, "Tom," was given to him by a noncommissioned officer who said to him, "You just don't look like a 'Harold.' I'm going to call you 'Tom.'" He was known as "Tom" for the rest of his life.<sup>162</sup>

When the First World War ended, Sebring had risen to the rank of sergeant and was twenty years old. He entered the Kansas State Agricultural College, today known as Kansas State University, in Manhattan, Kansas.<sup>163</sup> There he was president of his freshman class, treasurer of the sophomore class, and vice president of his senior class.<sup>164</sup> He was active in many campus organizations, but he was best known for his football prowess. He was 5 feet 11 inches tall and weighed 190 pounds, which was large for a football player in those days. He won varsity letters in 1920, 1921, and 1922.<sup>165</sup> He played end and was an outstanding pass receiver.<sup>166</sup> He established a school record for the most passes caught in one game.<sup>167</sup> He was named to the All-Missouri Valley and All-Western teams for football.<sup>168</sup>

He was very creative and an innovator in the passing game. While a player, he was the inventor of the "buttonhook" pass and the concept of "flooding," or overloading the passing zone. Both of these passing plays are still used by college and professional football teams.<sup>169</sup>

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160. *Id.* at 79.

161. Telephone Interview with Tom Sebring, Jr. (Nov. 28, 1999).

162. His son is Harold L. "Tom" Sebring, Jr., and his grandson, Harold L. Sebring III, is called "Tripp." Tripp is a graduate of the Stetson University College of Law and practices in Tampa, Florida.

163. Jacob, *supra* note 85, at 79–80.

164. *H.L. Sebring: Biographical Data for General Purposes* (unpublished resume post-1958 on file with Author).

165. Jacob, *supra* note 85, at 81.

166. Telephone Interview with Tom Sebring, Jr., *supra* note 155.

167. *Id.* Sebring's son, Tom, thinks it was thirteen or fourteen passes caught in one game.

168. *Id.*

169. *Id.* In the buttonhook pass, the receiver runs straight ahead, as if he is going for a long pass, but instead, when ten yards or so from the line of scrimmage, he suddenly stops, turns around, and takes a step back toward the passer. The defensive player who has been covering him has been running downfield alongside the receiver, but when the receiver

An assistant coach at the Kansas State Agricultural College was an Army captain who had been assigned by the Army to teach in that school's ROTC program. He was James Van Fleet, and he was to play an important part in Tom Sebring's life. Van Fleet had been a West Point graduate who commanded a battalion and had been wounded in combat in the First World War. He and Sebring, a noncommissioned World War I combat veteran, became fast friends.<sup>170</sup> "Van Fleet worked specifically with the [pass receivers], including Tom Sebring."<sup>171</sup> Van Fleet was reassigned to teach ROTC at South Dakota State College and then to the University of Florida.<sup>172</sup> He was a native of Bartow, Florida. He became a professor of military science at Florida, but the Army allowed him also to be an assistant coach for the university's varsity football team.<sup>173</sup> After two years as an assistant, Van Fleet took over as head coach and was head coach during 1923 and 1924.<sup>174</sup>

After graduating from Kansas State with a reputation as an innovator in the passing game, Tom Sebring was offered a job as an assistant coach at Notre Dame, under legendary coach Knute Rockne.<sup>175</sup> Coach Van Fleet, now head coach at the University of Florida, also offered Sebring a job as assistant coach, and Sebring chose the University of Florida position to be with his former coach and friend.<sup>176</sup> There were three assistant coaches, but Sebring was designated "first assistant."<sup>177</sup>

When he began as an assistant coach at Florida, he also attended the University of Florida College of Law as a part-time student.<sup>178</sup> After two years as head coach, Van Fleet was ordered by the Army to his next post, and he recommended Tom Sebring

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stops, the defender has difficulty stopping in time to prevent the completion of the pass. In flooding the passing zone, the team on offense concentrates several receivers in the same area downfield, saturating that zone or area, and this makes it difficult for the team on defense to move enough of its players into that area of the field quickly enough to cover all of those receivers.

170. Jacob, *supra* note 85, at 84-85.

171. *Id.* at 84.

172. TOM MCEWEN, *THE GATORS: A STORY OF FLORIDA FOOTBALL* 76 (1974).

173. Jacob, *supra* note 85, at 84.

174. *Id.* at 85.

175. Telephone Interview with Tom Sebring, Jr., *supra* note 155.

176. CASH, *supra* note 153, at 10; MCEWEN, *supra* note 172, at 82.

177. Jacob, *supra* note 85, at 88.

178. MCEWEN, *supra* note 172, at 82.

as his replacement. In 1924, at the age of twenty-six, Sebring became the head coach of the University of Florida football team, and he was its head coach for the next three seasons, resigning in 1928, the year when he received his law degree.<sup>179</sup>

During those years, the University of Florida was in what was called the "Southern Conference." It consisted of twenty schools, including such schools as the University of Alabama, Alabama Polytechnic Institute (Auburn), Clemson Agricultural College (Clemson), the University of Kentucky, the University of Maryland, the University of Tennessee, the University of Georgia, Virginia Polytechnic Institute (Virginia Tech), Tulane University, the University of South Carolina, the University of North Carolina, and Vanderbilt University.<sup>180</sup>

Tom Sebring's win-loss record for the three seasons he was head coach (1925, 1926, and 1927) was seventeen wins, eleven losses, and two ties.<sup>181</sup> It was the best winning percentage of any University of Florida head football coach until the mid-1960s, nearly forty years later.<sup>182</sup> Also, Sebring recruited what became in 1928 one of the most outstanding teams in college football history.<sup>183</sup> That 1928 team led the nation in scoring and lost only one game.<sup>184</sup> Sebring had recruited and coached practically every member of the legendary 1928 team.<sup>185</sup>

After those three seasons, Sebring received his law degree, and he resigned as Florida's head coach and entered the practice of law in 1928.<sup>186</sup> On October 25th of that same year, he married Elise Bishop of Gainesville.<sup>187</sup> The two had met while Sebring was assistant coach at the University of Florida. A friend introduced

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179. *Id.* at 82–83. James Van Fleet rose to the rank of four-star general and became one of the most effective generals of the United States Army during the Second World War. Jacob, *supra* note 85, at 86.

180. *The History of the Southern Conference*, S. CONF., [http://www.soconsports.com/ViewArticle.dbml?ATCLID=177772&DB\\_OEM\\_ID=4000&DB\\_OEM\\_ID=4000](http://www.soconsports.com/ViewArticle.dbml?ATCLID=177772&DB_OEM_ID=4000&DB_OEM_ID=4000) (last visited Apr. 16, 2015).

181. MCEWEN, *supra* note 172, at 83.

182. *Id.* at 71.

183. *Id.* at 85, 89, 91, 97.

184. *Id.* at 91, 92, 97.

185. *Id.* at 85, 89.

186. *Id.* at 85. There is controversy over whether Sebring's resignation was completely voluntary. Jacob, *supra* note 85, at 97–99.

187. Jacob, *supra* note 85, at 103.

them to each other. Elise had started a dancing school in Gainesville.<sup>188</sup>

Sebring practiced law in Miami for a short time, then joined the firm of Marks, Marks, Holt, Grey and Yates in Jacksonville and practiced there from 1928 to 1934.<sup>189</sup> He practiced law during the week and on weekends was a football referee, refereeing major college games throughout the Southeast.<sup>190</sup> In 1934, he was appointed circuit judge for the Eighth Judicial Circuit of Florida, in the Gainesville area.<sup>191</sup> As a circuit judge, he gave up being a weekend football referee.<sup>192</sup>

On December 9, 1941, he announced that he would run for a seat on the Florida Supreme Court. He won in the statewide Democratic Party primary and was unopposed in the general election, held on November 3, 1942.<sup>193</sup> He was sworn in as a justice of the Florida Supreme Court on January 4, 1943,<sup>194</sup> and served until he resigned to become Stetson's dean in 1955.<sup>195</sup> He served as chief justice from 1951 to 1953.<sup>196</sup> He suffered a heart attack during the 1950s before resigning from the Florida Supreme Court to become Stetson's dean.<sup>197</sup>

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188. Telephone Interview with Tom Sebring, Jr., *supra* note 155.

189. Jacob, *supra* note 85, at 103.

190. Telephone Interview with Tom Sebring, Jr., *supra* note 155.

191. *Visiting Jurist Hears His First Two Cases Here*, ST. PETE. TIMES, Feb. 23, 1939, at 5.

192. Jacob, *supra* note 85, at 104; Telephone Interview with Tom Sebring, Jr., *supra* note 155.

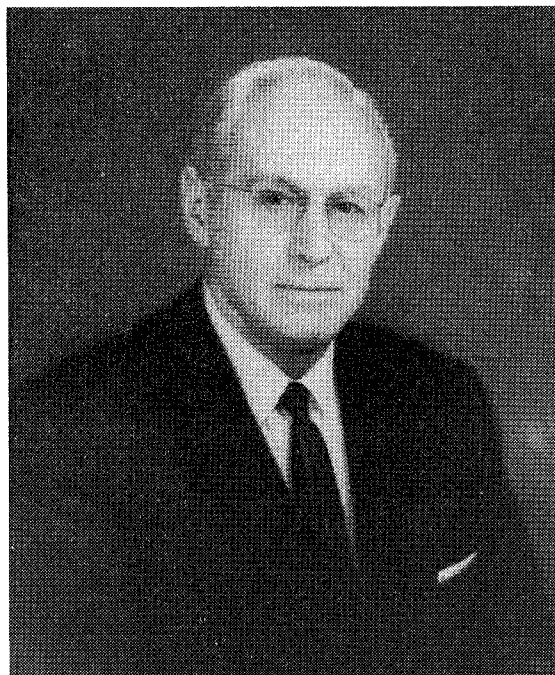
193. Jacob, *supra* note 85, at 106.

194. *Id.*

195. Norman Gelman, *The Remarkable Days of Coach Attorney Judge Dean Tom Sebring*, ST. PETE. TIMES, Sept. 29, 1957, at 4-5.

196. Jacob, *supra* note 85, at 129.

197. *Id.* at 138 (citing *Reflections and Memories of Justice Harold L. "Tom" Sebring and Justice E. Harris Drew* (Fla. Sup. Ct. Historical Soc'y video recording Nov. 2, 1990)). The Florida Supreme Court Historical Society sponsored a program that honored Justice Sebring and Justice E. Harris Drew, both of whom were being honored posthumously. A copy of the video recording of the program is on file at the Dolly & Homer Hand Stetson Law Library. Dean Sebring's grandson, Harold L. "Tripp" Sebring III, indicated that the heart attack might have been part of his grandfather's reason for leaving the court and becoming dean at Stetson. Dean Sebring was a Baptist, and that also might have attracted him to Stetson, a Baptist-affiliated university. His primary motivation, though, was his desire to teach the law to future lawyers. *Id.*



Dean Harold L. "Tom" Sebring  
(Photo Credit: Author's Personal Collection)

Sebring was one of the most popular elected officials Florida has ever had. It is easy to understand his political appeal, with him having been highly successful as the head football coach of the University of Florida and an outstanding and very likable lawyer and judge at the circuit and supreme court levels.

#### *IX. THE MEDICAL CASE*

Judges Brand and Sebring were at Nuremberg during roughly the same time period. The Medical Case, or Case Number One, of the subsequent proceedings began on December 9, 1946, and ended on August 20, 1947. Case Number Three, the Justice Trial, began on March 5, 1947, and ended on December 4, 1947.<sup>198</sup> So

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198. FINAL REPORT, *supra* note 5, at 118–19.

Brand and Sebring were trying cases in two of the courtrooms of the Palace of Justice in Nuremberg at the same time.

The judges for the Medical Case were Presiding Judge Walter B. Beals, Chief Judge of the Supreme Court of Washington; Judge Sebring; and Johnson J. Crawford, Judge of the District Court of Oklahoma.<sup>199</sup> The case centered primarily on participants in medical experiments that had taken place in concentration camps during the Nazi years. The experiments were performed on Jews, prisoners of war, and other concentration camp inmates without their consent.<sup>200</sup>

The case was titled *United States v. Karl Brandt*. Brandt had been Adolf Hitler's personal physician.<sup>201</sup> He had been named Reich Commander for Health and Sanitation and also became General Commissioner for Medical and Health Matters. These were the highest medical positions in the Reich, and Brandt was also a major general in the SS, reporting directly to Hitler.<sup>202</sup>

Some inmate experiment subjects were infected with serious diseases, such as malaria and typhus, and then various medicines were used in treating those diseases to determine the medicines' effectiveness.<sup>203</sup> Some inmates were deliberately injected with deadly bacteria, such as streptococcus, gangrene, and tetanus. Wood shavings and broken glass would be forced into wounds to simulate battlefield injuries, and the subjects would be treated with drugs to determine their effectiveness for treatment of wounded soldiers on the battlefield. These subjects suffered, and some died or became permanently disabled.<sup>204</sup>

At the Dachau Concentration Camp, experimental subjects were given only seawater to drink for long periods to determine whether seawater could at least temporarily sustain the lives of sailors leaving torpedoed ships.<sup>205</sup> In another experiment, subjects were placed in ice water for periods of up to three hours or were

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199. *Id.* at 162.

200. *Id.* at 163.

201. *Id.* at 162.

202. *Id.*

203. THE FIRST GERMAN WAR CRIMES TRIAL: CHIEF JUDGE WALTER B. BEALS' DESK NOTEBOOK OF THE DOCTORS' TRIAL, HELD IN NUERNBERG, GERMANY, DECEMBER 1945 TO AUGUST 1947, at 130, 133 (W. Paul Burman ed., 1985).

204. *Id.* at 131.

205. *Id.* at 132.

kept naked outdoors for many hours at below-freezing temperatures. Then an attempt would be made to warm and try to revive them. The victims screamed in horrible pain as parts of their bodies froze, and many of these subjects died.<sup>206</sup> At the Buchenwald Concentration Camp, poisons were given to inmates. If the victims did not die, they were killed so that autopsies could be performed to determine the effects of the poisons.<sup>207</sup>

Karl Brandt and three other defendants in the case were charged with killing persons considered by the Nazis to be undesirable and a burden on society—the elderly, the disabled, the mentally ill, and others. The killings took place in hospitals, asylums, and nursing homes. Brandt and another defendant, Wolfram Sievers, were accused of murdering 112 Jews for the purpose of gathering anthropological information. The victims' photographs and measurements were taken, and then they were killed. The killers then performed their anatomical research, comparing features of the bodies, including the size of the brains of the subjects of the research.<sup>208</sup>

These are just a few examples of the kinds of experiments the defendants in the case had engaged in. Later, in talking about the evidence in the case, Sebring said:

When I first sat as judge I looked at these shabby little men (the defendants) sitting there looking just like the rest of us. Then the prosecution began to put on its evidence. It was all so clear, so one-sided, I began to doubt the evidence. I thought it couldn't be. People don't act like that in a civilized world. If they hadn't confessed their guilt on the stand, I don't think I would have believed it even after it was all over.<sup>209</sup>

The defense lawyers did not try to prove that the experiments had not taken place. Instead, they tried to show that some of the experiments were necessary to the German war effort and some were not as dangerous as alleged in the indictment. They also argued that medical experimentation and euthanasia had been practiced in other countries. Moreover, they tried to estab-

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206. *Id.* at 130.

207. *Id.* at 133–34.

208. FINAL REPORT, *supra* note 5, at 164.

209. Jacob, *supra* note 85, at 124 (internal quotations omitted).

lish that some of the victims had volunteered for the experiments.<sup>210</sup>

The defendants' main defense was that they were acting under orders and had no power to refuse to undertake the experiments. Therefore, they could not be guilty, they argued.<sup>211</sup> However, fifteen of the twenty-three defendants in the case were convicted.<sup>212</sup> The tribunal rejected the "following orders" defense, as did the Justice Tribunal in Case Three. The Medical Tribunal's judgment, among other things, included the following statement:

These experiments were not the isolated and casual acts of individual doctors and researchists working solely on their own responsibility, but were the product of coordinated policy-making and planning at high governmental, military, and Nazi Party levels, conducted as an integral part of the total war effort.<sup>213</sup>

Of the fifteen who were convicted, seven were sentenced to death by hanging. Five were sentenced to life imprisonment and three to long-term imprisonment.<sup>214</sup>

In their opinion, Justice Sebring and his two fellow judges in the Medical Case enunciated certain minimum standards that those conducting experiments on human beings must follow. This probably was the first time that anyone had placed specific limitations on medical experimentation on human beings. The panel set forth ten ethical principles or guidelines that must be followed in any type of medical experimentation on humans.

Here are those ten principles:

- (1) The voluntary consent of the human subject is absolutely essential.

This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint

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210. FINAL REPORT, *supra* note 5, at 164.

211. *Id.*

212. *Id.* at 165.

213. *Id.* (internal quotations omitted).

214. *Id.*



or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.

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- (2) The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.
- (3) The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.
- (4) The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
- (5) No experiment should be conducted where there is an *a priori* reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.
- (6) The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.
- (7) Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
- (8) The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.
- (9) During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where con-

tinuation of the experiment seems to him to be impossible.

- (10) During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.<sup>215</sup>

Several years ago I spoke with a scholar who has studied and written about the Nuremberg trials, and he said that Justice Sebring was the member of the Medical Tribunal who was primarily responsible for the ten principles that were announced by that tribunal. And these principles are still followed, almost seventy years after they were announced.<sup>216</sup>

Every year while dean at Stetson, Sebring would show films to the students regarding the atrocities committed by the Nazis. He maintained that the best way to ensure that nothing like the Holocaust would ever take place again was to educate the public about just how horrendous the Holocaust had been.

I was reminded by my Stetson classmate, Joe Ann Van Gelder (née Taylor), that Dean Sebring wanted students to know about the Nazi's atrocities. In a letter to me, she wrote the following:

I don't know whether you recall it or not (I know I certainly am haunted to this day by what I saw), but at least once and possibly more times—maybe even annually, . . . Dean Sebring required the student body (or perhaps it was just the Senior class) to sit through a visual presentation of the evidence given

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215. *Id.* at 166–68.

216. That scholar was Jonathan A. Bush, Lecturer-in-Law, Columbia Law School, who was at the Stetson University College of Law to study Judge Sebring's papers regarding the Medical Case. Those papers are located at the school's law library. Bush's scholarship includes studying Telford Taylor, the American "chief prosecutor at the later twelve Nuremberg trials (1946–[19]49). . . . Before entering academia, Bush was founding General Counsel of the U.S. Holocaust Memorial Museum (Washington DC) and a trial lawyer with the U.S. Department of Justice, prosecuting Nazi war criminals." *Conference on Corporate War Crimes: Prosecuting Privilege of Natural Resources*, PILLAGECONFERENCE.ORG, <http://www.pillageconference.org/speakers/> (last visited Apr. 16, 2015).

at the [Nuremberg] Trials. Many "pictures" are indelibly imprinted on my memory of what I saw that day (and, although I was the only woman present, there were no dry eyes at the end of the showing). The most gruesome, horribly inhumane vision that remains in my memory is a home movie taken by some Nazis who were having a celebratory drinking party with a close up shot of a lampshade, each panel of which was made of human skin that bore the numerical identification numbers of Jews who had been slaughtered and whose forearm skins had been used to make the lampshade. As I write this, I am so revolted that, once again, crying in shame and agony at man's inhumanity to man, I find myself back again in the . . . classroom along with others of our class[.] . . . It was my impression that Dean Sebring intended this to be an annual requirement of his students so that we/the world would never forget the horror.<sup>217</sup>

### X. CONCLUSION

Of the subsequent cases at Nuremberg following the first major trial in which leading Nazis were prosecuted, the Medical Case and the Justice Case were the two most prominent and most memorable. The Justice Case is memorable because of the publicity and notoriety that resulted from the play and movie, *Judgment at Nuremberg*, which, although somewhat fictional, was based on that case. And the Medical Case is memorable because of the horrors, including the medical experiments, that were exposed to the world through that trial and because of the principles regarding experimentation on human subjects that were enunciated by the tribunal in that case. Justices Sebring and Brand were members of those panels, with Brand the presiding judge in the Justice Case.

The two were at Nuremberg at approximately the same time while hearing their respective cases. The trials took place in the same building, and the two met, got to know each other, and became friends. Furthermore, their wives, Irene Brand and Elise Sebring, formed a friendship.<sup>218</sup> These friendships between the two couples later caused Justice Brand to join Sebring at Stetson. Justice Sebring was at Stetson from 1955 to 1968, and he died on

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217. Jacob, *supra* note 85, at 165–66 (internal quotations omitted).

218. Osgood, *supra* note 24.

July 26, 1968, at age seventy, shortly after stepping down from the deanship. Justice Brand taught at Stetson for five years, from 1958 to 1963. He then left to join his son, Tom, in the practice of law in Oregon. However, he died on February 28, 1964, at the age of seventy-seven, while on vacation in Phoenix, Arizona, with Irene.<sup>219</sup>

What were these men like? They were different in some ways. Justice Brand was tall, about six feet tall, and slender. Sebring was almost six feet tall and, as a former football player, was somewhat heavier. Photos of each are included in this Article. In their personalities, Brand was a very scholarly person who seemed happy being in his office studying United States Supreme Court decisions and thinking about constitutional law, while Justice Sebring was a little more outgoing and slightly more of an extrovert. But Judge Brand certainly could not be described as an introvert. Both men were extremely friendly, likable, and highly regarded by everyone who knew them. Each had a friendliness, a warmth in his relationships with others.

There were many more similarities than differences between them. Each was a genuine person, and by that I mean that each in his contacts with others was direct and sincere, without pretense of any kind. Each was honest and fair-minded. Neither would jump to a conclusion unless the conclusion was based soundly on facts. Each possessed enormous integrity. Each possessed what might be called an "inner dignity." We who were their students greatly admired each of them. United States District Judge Elizabeth Kovachevich said, for example, about Justice Brand:

When I graduated from law school, Justice Brand and his wife did me the great honor of coming to my home in St. Petersburg and dining with me and my parents. It was a memorable evening of warm and generous conversation with a lovely couple and a man that I have admired as a gallant gentleman and premier jurist. I could never have imagined that I would be privileged, by the people of this [S]tate and this country, to become a jurist myself. I have never [forgotten] the example of men like Justice James T. Brand who knew how to wear the

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219. *James T. Brand, Ex-Justice Dies*, *supra* note 37.

robe and to be so humane while doing it. [T]hose who were his students were blessed to study constitutional law with him.<sup>220</sup>

Let me discuss in more detail the characteristics they shared. They loved teaching and being with students. They were absolutely dedicated to their students. Students considered each a friend as well as a teacher or dean.

Both loved the law and each had a highly developed sense of what constitutes "justice." Judge E.J. Salcines, former state attorney for Hillsborough County and retired judge of the District Court of Appeal, Second District of Florida, remembered a conversation Judge Brand and several students had while eating together in the school cafeteria. A question arose: how should a judge decide a case if the evidence in the case is even? Brand searched in his pocket and removed a fountain pen. He balanced the pen on his finger and said, "When your mind vacillates and you ask yourself which way to rule, and the evidence is balanced, you should always rule on the side of individual rights. Don't let the pen fall on the side of the government, because an individual right will have been lost forever."<sup>221</sup>

Brand and Sebring were completely unselfish, in that each devoted his entire career to public service. Neither was intent on making money. Instead, their goals in life were to do things that would help others or would benefit society. Justice Brand's annual state pension when he retired from the Oregon Supreme Court was \$8,000, half of his salary as an active judge.<sup>222</sup> This was before rampant inflation, and \$8,000 then was worth more than it is today, but even so, it was not a plentiful sum of money to live on. He and Mrs. Brand lived in very modest quarters at the campus during their five years at Stetson.

Justice Ben F. Overton, in a 1990 ceremony at Stetson commemorating the career of Justice Sebring, told of a time when

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220. Email from Elizabeth Kovachevich, U.S. Dist. Judge, Middle Dist. of Fla., Tampa Div., to Bruce R. Jacob, Professor & Dean Emeritus, Stetson Univ. Coll. of Law (Apr. 26, 2007) (copy on file with Author).

221. Telephone Interview with E.J. Salcines (Apr. 16, 2007).

222. *Justice Brand Calls for Reform, Sees Court Delay in Present System*, THE OREGONIAN, June 8, 1958 (copy on file with Author). The sum of \$8,000 was equal to approximately \$66,000 in today's dollars, taking into account the effects of inflation over the past fifty-six years. *Inflation Calculator*, IN2013DOLLARS.COM, <http://www.in2013dollars.com/1958-dollars-in-2014?amount=8000> (last visited Apr. 16, 2015).

Overton was a young lawyer. Sebring somehow had learned that Overton was about to be offered a judgeship by the governor. Sebring, then the dean at Stetson, asked Overton to lunch. Over their meal, Sebring urged Overton to accept the position, telling him, "You don't have as much money as your contemporaries, . . . [but] the challenges and satisfaction [of public service] will more than make the difference."<sup>223</sup>

Brand and Sebring each had a tremendous work ethic and an enormous sense of personal responsibility. Sebring had worked hard as a boy on his family's farm in Kansas. He "followed the hay," traveling from farm to farm during the harvest, pitching hay into wagons.<sup>224</sup> And I have already described how Justice Brand would work past midnight while teaching at Stetson, preparing for the next day's classes.

Neither took himself too seriously. Each possessed a great deal of humility. As much as each had accomplished in life, neither ever gave others the feeling that he thought he was more important than anyone else. They treated their students as equals, as fellow lawyers rather than students. At the beginning of his first class at Stetson, Judge Brand walked in and said, "My name is James Brand. I am from Oregon and practiced there for many years. What I now am doing is a change for me. We're going to learn together."<sup>225</sup>

Brand's and Sebring's integrity probably was their most significant mutual characteristic. They were completely honest in everything they did. Consider, for example, Justice Brand's reluctance to become the consultant for *Judgment at Nuremberg* because he felt he could not endorse or give his imprimatur to the movie because it had departed somewhat from what had actually taken place before the Justice Tribunal. Here is an illustration of Justice Sebring's honesty and integrity: on a Sunday following a football game they had attended in Jacksonville, he and his son, Tom, were passengers in an automobile driving from Jacksonville to Tallahassee. The car was stopped for speeding by a highway patrolman near Lake City, Florida. When the car was stopped, the driver, who was a friend of Justice Sebring's, "said to the pa-

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223. Jacob, *supra* note 85, at 159 n.660 (internal quotations omitted).

224. *Id.* at 75 (internal quotations omitted).

225. Telephone Interview with Glenn Woodworth (Apr. 16, 2007).

trolman, 'Chief Justice Sebring of the Supreme Court is in the car and has to get back to his office. He is in a hurry to get back to his office.' The officer looked at Justice Sebring and said, 'Justice Sebring, are you in a rush to get back to Tallahassee?'" According to Sebring's son, Tom: "Dad looked at the officer and said, very emphatically, 'No.'" The driver received a ticket for speeding. "Needless to say," Tom relates, "it was a quiet ride back to Tallahassee."<sup>226</sup>

Both Sebring and Brand were great judges, teachers, and mentors to those of us who were their students. Their contributions to Stetson as an institution and to their students were immeasurable. What a privilege it was for us to have both of them at our law school at the same time. And what a privilege it was for me, personally, to have known both of them and to have had both as my teachers and friends. They were remarkable, very uncommon men, and neither will be forgotten by those of us who knew them, as long as we live.

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226. Jacob, *supra* note 85, at 171 (internal citations and quotations omitted).

