



**Musmanno at a makeshift desk among bombed-out structures in Italy, 1944.**

All photos Duquesne University Archives and Special Collections.

# A Pittsburgh Judge's Path to NUREMBERG AND BACK

By Thomas White

**N**uremberg, Germany. Twenty-four former officers of the SS *Einsatzgruppen* sat somberly in the defendant's dock in a large courtroom. Nearby were 24 defense attorneys, clad in the traditional black robes of the European courts. Behind them was a line of armed American soldiers, standing guard. It was September 29, 1947, and the former leaders of the Nazi mobile death squads were on trial by U.S. Military Courts in a second round of tribunals. Commonly known as the "Trials of War Criminals before the Nuremberg Military Tribunals" or the "Subsequent Nuremberg Trials," they prosecuted mid-level Nazi officials who carried out war crimes and implemented Nazi policies.

This particular trial (officially known as *The United States of America vs. Otto*

*Ohlendorf, et al.*) was only one of 12, but it had attracted substantial attention. Dubbed by the Associated Press "the biggest mass murder trial in history," the U.S. military was prosecuting the men who had carried out the Holocaust beyond the confines of the concentration camps.<sup>1</sup> The *Einsatzgruppen*, or Action Groups, of the SS operated just behind the main German lines, identifying Jewish communities and others considered "undesirable" by the Nazi high command. The commandos were ordered to control and often execute these populations, with much of the discretion left to the officers. From 1941 to 1943 alone it is estimated that the *Einsatzgruppen*, who ultimately answered to Adolf Eichmann (overseer of Jewish affairs), had murdered more than a million Jews, Gypsies, and other political enemies in a series of massacres

throughout Nazi-occupied Europe.

Stripped of the trappings of power, the officers who once headed the commando units were now prisoners in their own land. Their fate was to be decided by a tribunal of American judges with military backgrounds who had been appointed by President Harry Truman. The presiding judge, who headed the tribunal, was a man of small stature and intense seriousness. He had served in the war in various capacities due to his combination of skills, academic and legal background, and seemingly ceaseless energy. Allegheny County Judge Michael A. Musmanno now had to address one of the darkest chapters of the war under the watchful eyes of the international community.

But how did a Pittsburgh native end up as head of a war crimes tribunal?

**M**usmanno's personality always loomed larger than his physical size. Direct and outspoken, most people who had interactions with the judge either loved and admired him or disliked him intensely. Few, though, ever forgot their encounters with the man whose life came to encapsulate so many political and social issues of the twentieth century.

Born in 1897 to a working class family of Italian immigrants in Stowe Township, Musmanno retained close ties to the community in which he was raised. His father was a laborer, but the family valued education and encouraged Michael's academic interests even though his family could not afford to pay for higher education. Michael worked in mines and in the steel industry to pay for college. As a result, the ambitious young man earned multiple degrees from George Washington University, Georgetown, National University, American University, and the University of Rome. When the majority of his education was finished in the early 1920s, Musmanno returned to the Pittsburgh area to practice law.<sup>2</sup>

Aside from his educational interests, Musmanno was fascinated with movies and film in his youth. He gained an appreciation for the power of images, photos, and film and developed a flair for the theatrical in both his speeches and writings. It was an appreciation that would serve him well throughout his life. When he was just starting out as a lawyer and had trouble acquiring cases, Musmanno took

the dramatic step of defending a man who had become intoxicated and assaulted him. The press coverage of the unusual case attracted more clients and launched his legal career.



**Michael Musmanno enlisted in the Army after America's entry into World War I, but was never deployed in Europe.**

Musmanno made a habit of launching himself into controversial and important cases. In the mid-1920s the young lawyer traveled to Boston to join the appeals team for Sacco and Vanzetti, the two Italian immigrant anarchists convicted of murder on what many considered flimsy evidence. Though he personally opposed

the ideology of anarchism, Musmanno was convinced that the men received an unfair trial. The case grabbed national headlines, and Musmanno met and corresponded with many well-known writers and intellectuals of the time who supported the pair.<sup>3</sup> His involvement with the case made him prominent enough to enter the arena of politics, and in 1928 he was elected as a Democrat to the Pennsylvania House of Representatives. He was the youngest member at the time.

During his term in the state house, Musmanno came to the defense of Pennsylvania coal miners and vigorously pushed for the elimination of the Coal and Iron Police, which served as the private police force and sometimes extralegal enforcers for the mine owners and large corporations. He was re-elected in 1930, and served until he was elected as a Judge in the Allegheny County Court system in 1932. He continued to document the abuses of the Coal and Iron police and wrote a play (which was later turned into a Hollywood movie) and a book titled *Black Fury*. It brought significant attention to the issue, and the laws that enabled the Coal and Iron Police were soon repealed.<sup>4</sup> At this point, he had solidified his reputation as a crusader for labor and the public good.

As a judge, Musmanno continued to attract attention by issuing unusual and creative court decisions. He once wrote a decision in the form of a limerick. On another occasion, he sentenced himself to three days in prison so he could get a better sense of what life was like on the other side. He even issued



Michael Musmanno amid the ruins of an Italian town during the occupation of Italy, 1943.



Michael A. Musmanno in his Naval Reserve Uniform, 1942.

**Musmanno made a habit of launching himself into controversial and important cases.**

Musmanno stands atop rubble during his time as military governor of the Sorrentine Peninsula, 1944.



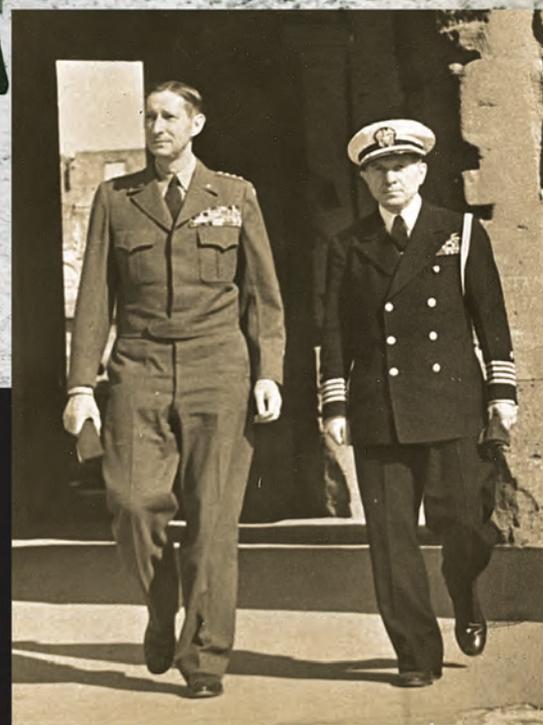


an opinion in 1936 supporting the existence of Santa Claus. *The Bulletin Index* coined the term “Musmanntics” to describe his out-of-the-ordinary courtroom proceedings.<sup>5</sup> Still, behind his light-hearted escapades, the judge continued to address serious issues, including drunk driving. After dealing with several tragic cases, Musmanno decided to send a strong message about the far-too-common practice. Throughout 1936 and 1937 the judge sentenced almost everyone convicted of drunk driving, even for a first offense, to 30 days in prison.

When the U.S. entered World War II, Musmanno sought a commission in the Navy. He entered at the rank of Lieutenant Commander, but quickly rose to the rank of Captain and later Rear Admiral. He had long desired to serve his country, possessing what some might consider a movie-like sense of heroism. During World War I he had enlisted

in the Army, but just as he finished training the war had ended. As a young man he expressed disappointment in not being deployed in the “Great War.”<sup>6</sup> He could not know then that he would eventually serve in a much higher position than infantryman.

After years of personal experience, education, and travel, Musmanno was now a great asset to the war effort. Being familiar with Italy and having fluency in Italian, Musmanno was selected to be part of the Italian campaign in 1943. When it came time for the ground invasion of Italy, the judge was assigned as the naval aide and liaison to Army General Mark Clark. He worked intimately with the general to coordinate efforts between their two branches. He participated in several of the major military actions and was present for the official surrender of Italy. He was wounded twice (receiving the Purple Heart with the Oak Leaf Cluster) and had several other close calls.

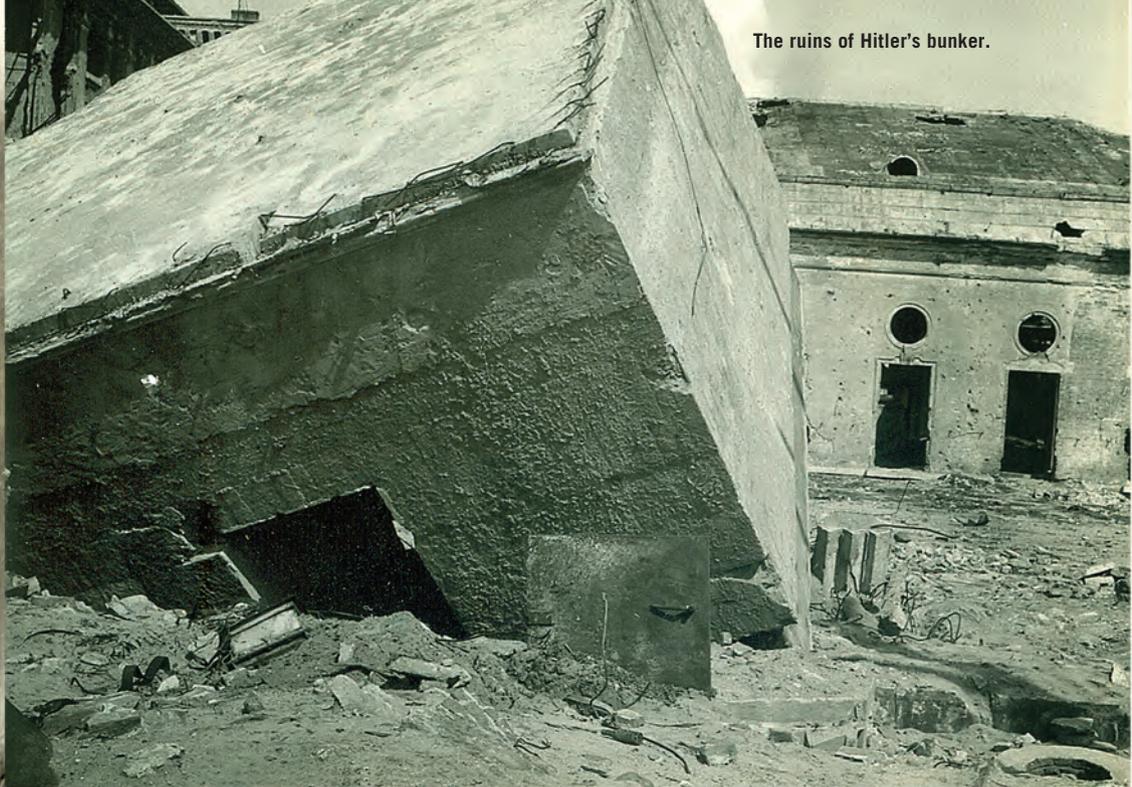


**TOP:** Military Governor Musmanno with a farmer on the Sorrentine Peninsula during the seasonal harvest in 1944.

**INSET:** General Mark Clark (left) and Musmanno touring the Coliseum in Rome in 1945. Musmanno served as the Naval liaison to Clark during the Italian campaign.



Mt. Vesuvius 1944.



The ruins of Hitler's bunker.

One of the more dramatic incidents in his service was later written about in *Argosy* magazine by Glenn Infield. In “The Captain and the Poison Gas,” Infield described in detail the bombing and sinking of Musmanno’s ship, the *Inaffondabile*, in the Adriatic Sea. On the night of December 2, 1943, Musmanno was on deck when he noticed tiny pieces of foil falling from the sky. The Germans were dropping it in an attempt to blind the allied radar, and within a few minutes the bombing started. Musmanno had just enough time to warn his crew, but his ship was hit and sunk along with other ships in the area.

After jumping into the water, the judge almost blacked out but remained conscious long enough to get back to the surface. Oil, fuel, and other chemicals were leaking from nearby ships, and the surface of the water was on fire in many areas. Musmanno and his men did not know it at the time, but the vessel *John Harvey* had been carrying a secret cargo of mustard gas. The military was transporting it to Italy after rumors had circulated that the Nazis might begin using chemical weapons. As the cloud of the toxic gas spread out, Musmanno managed to grab hold of a barrel of olive oil to use as a floatation device, and

in the process became covered in the slippery substance. His men grabbed other barrels and tied them together. They made their way to shore coughing and suffering from eye irritation.

Almost 1,000 American sailors ended up in the water that night after the raid, and 617 suffered from symptoms of exposure to mustard gas. Since the doctors on shore were not initially aware of the gas, they did not wash it off the skin of the sailors right away, leaving it to cause further burns and damage. Most of Musmanno’s exposed skin had been covered

in olive oil, protecting it from the gas.<sup>7</sup>

Not all of Musmanno’s assignments were as dangerous. After the fighting shifted further north, Musmanno was appointed Military Governor of the Sorrentine Peninsula for six months in 1944. It was the region that his own family had originated from, so he held a special affinity for its residents. Though there was comparatively little combat, Musmanno had to handle logistical operations and maintain the peace. The unexpected eruption of Mt. Vesuvius in March 1944 also made his job more complicated, and he found himself

**Musmanno managed to grab hold of a barrel of olive oil to use as a floatation device, and in the process became covered in the slippery substance.**

coordinating relief efforts. Aside from the unexpected natural disaster, the area remained stable under Musmanno's watch.

Even as the war was coming to a close, Michael Musmanno's work was just beginning. Due to his legal background, Musmanno was assigned to the Navy team that worked to determine the true fate of Adolf Hitler at the end of the European War.

During the final days of fighting in Europe, conflicting accounts of Hitler's death circulated among the Allies. The lack of clarity as to exactly what happened to the dictator was compounded when the Soviets had reached Berlin first and seized control of the bunker. While U.S. military leaders generally believed that Hitler was dead, potentially dangerous rumors circulated on the ground in Germany that Hitler had in fact escaped. Musmanno suggested to his superiors that a detailed and accurate account of Hitler's final days should

be made for both historical purposes and to prevent the Nazi guerillas from using rumors of his escape to rally resistance. The Navy appointed him to this task, authorizing him to interview anyone who might have relevant information.

Between 1945 and 1948, Musmanno and others conducted more than 200 interviews with associates of Adolf Hitler. The focus of the interviews was on the final 10 days in the bunker. Through the various personal accounts, the judge attempted to create a clear picture of Hitler's mental state as Germany fell and gather the details of his suicide. The subjects of his interviews ranged from Gertraud (Traudl) Junge, Hitler's secretary who typed his last will and testament, to Admiral Karl Doenitz, whom Hitler appointed as his successor. The judge also hired a cameraman and photographer to document the interviews. Together the accounts created a clear and

personal picture of Hitler's downward spiral and the end of the Third Reich.<sup>8</sup>

After he returned from Europe, Musmanno used the information that he gathered from the interviews and at Nuremberg to write the book *Ten Days to Die*. Released in 1950, it was one of the earliest published accounts detailing the death of Hitler, and it gave Americans an inside look at the German collapse. In 1955 Columbia Studios adapted the book into a movie titled *The Last Ten Days* for release in Germany. It became a popular film as Germans still struggled with the aftermath of the war. For the rest of his life Musmanno would argue against accounts that Hitler had survived and escaped to South America or elsewhere.<sup>9</sup>

At the same time he was conducting the interviews, Musmanno had another job. In 1946 he was made president of the U.S. Board of Soviet Repatriation in Austria. During the war,

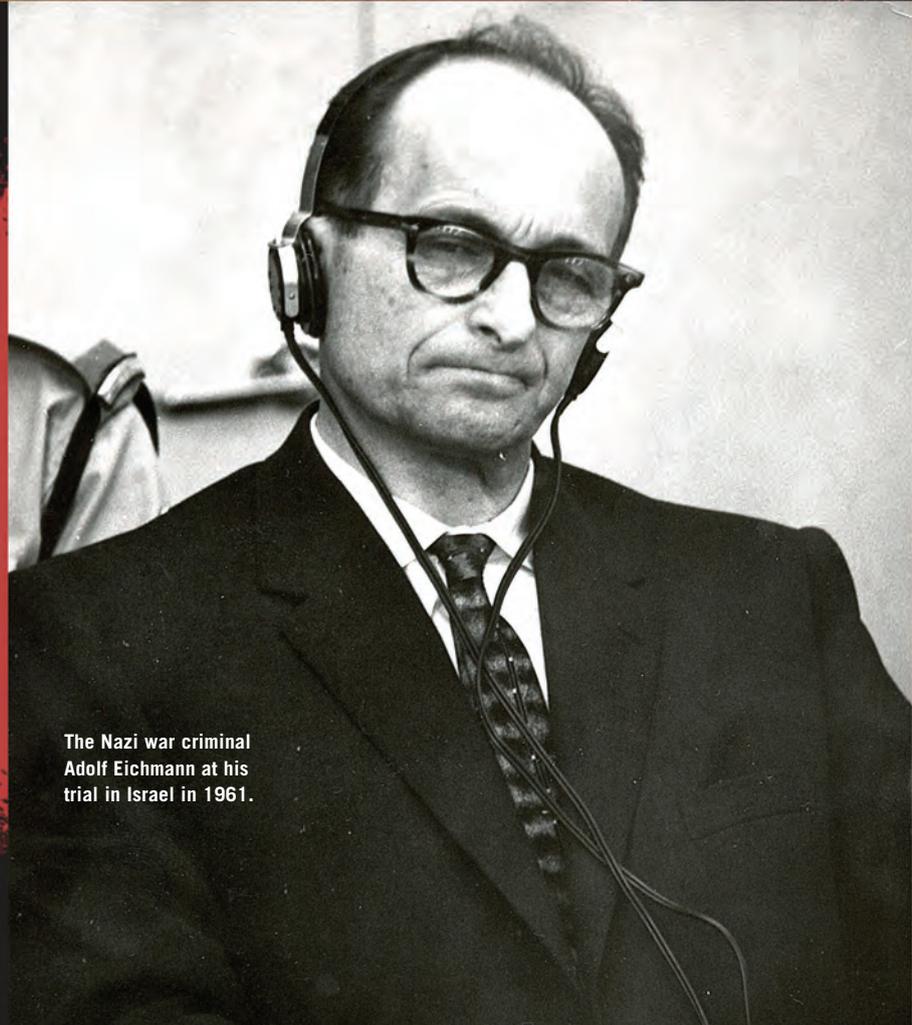
Hitler's secretary Traudl Junge is interviewed by Musmanno about the final days of the war in the bunker in Berlin.





Judge Musmanno at Nuremberg, 1947.

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The Nazi war criminal Adolf Eichmann at his trial in Israel in 1961.

the U.S. and Great Britain had tentatively agreed to return displaced nationals to their home countries. In the years immediately following the war (at the dawn of the Cold War) the opinions of many Americans changed dramatically. Musmanno refused to send any of the more than 5,000 displaced Eastern Europeans that were brought before his commission back into Soviet occupied or controlled nations. He firmly believed that many of them would be killed or imprisoned for political differences. As reports of Soviet abuses in the occupied countries drifted west, Musmanno saw strong parallels between Communism and Nazism. In his eyes, both were systems that threatened freedom and liberty, abused power, and constituted a real military threat to America and the rest of the world.<sup>10</sup> For Musmanno, the difference was not great between the totalitarian regimes of the Nazis and the Soviets. Though the crusader in Musmanno was identifying the communists as his next enemy, he first had the somber task of bringing Nazis charged with war crimes to justice.

Though all of his wartime experience had prepared him for Nuremberg, it was his legal background that really mattered. After he received his appointment, he served as a judge in three of the trials. The first was that of German Field Marshall Erhard Milch, who was charged with committing crimes against humanity, using slave labor, and conducting medical experiments on unwilling subjects, among other offenses. The trial lasted from January to April 1947. Milch was convicted and given a life sentence, though it was commuted to 15 years in 1951.

From April through November, Musmanno sat as a judge in the Pohl Trial. Oswald Pohl and 17 of his subordinates represented the leadership of the *SS-Wirtschafts-Verwaltungshauptamt*, (Economic Administration Office) the branch of the SS charged with administering the Nazi concentration and extermination camp system. Pohl served as the head inspector



Musmanno (top row, third from left) listens to evidence at the Pohl Trial in Nuremberg in 1947.

for the camps and also sent out prisoners for forced labor. At the end of the trial Pohl and three others were sentenced to death; most of the other prisoners received lengthy sentences.

When it came time for the *Einsatzgruppen* Trial, it was Musmanno's turn to serve as the head judge. From September until April 1948, Musmanno and associate judges John J. Speight and Richard D. Dixon listened to the testimony of the men who had committed numerous atrocities during the war. As in the previous Nuremberg Trials, few of the defendants denied their actions, but rather defended themselves by saying that they were simply following orders. At one point during the trial, Otto Ohlendorf declared that he would have shot his own sister if he had been given the order from Hitler. He claimed, "I never hated an opponent or enemy, and I still do not do so today."<sup>11</sup> Before the war such an argument might have served as a shield, but the war crimes of the Nazis were on too large a scale and too well documented for such detachment.

Musmanno later wrote that Ohlendorf and many of the other defendants never showed any signs of remorse, and often displayed cynicism and a sense of self-righteousness. They genuinely believed that

they were honest and honorable and that everything that they did was for the benefit of the German people. A decade and a half after the trials, Musmanno explained in his book, *The Eichmann Kommandos*, why he felt that the "just following orders" argument was invalid. He noted that there had in fact been ways to avoid participating in the massacres and other morally reprehensible acts if one had wished, and the evidence of such came from the officer's own testimony. If one did not wish to directly defy or refuse orders, it was clear that officers who were inefficient, drank alcohol regularly, or simply did not "have the stomach" to carry out the orders were reassigned. While pretending to be inefficient or an abuser of alcohol would result in an officer or soldier receiving a lower position, they would not participate in the massacre.<sup>12</sup>

In fact, Musmanno found little evidence that directly disobeying orders would result in any serious punishment. During one of his interviews with SS General Erich von dem Bach Zelewski, the judge asked him directly if not following such orders would result in execution or severe punishment. General Zelewski told him on more than one occasion that it would not, and there were SS officers who refused to take part in the executions. He



Musmanno at his typewriter in 1961 with the just-released *Eichmann Kommandos* nearby. The book chronicled his experiences at Nuremberg and at the Eichmann Trial in Israel.

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knew of no instance where a German soldier was executed for being asked to be relieved of his duties.<sup>13</sup> It was clear to Musmanno and his fellow judges that the anti-Semitic zeal of the *Einsatzgruppen* had little to do with following orders. At least once, Otto Ohlendorf had actually carried out a massacre and retroactively sought orders to justify his actions.

All of the members of the *Einsatzgruppen* were found guilty, though their sentences varied. Musmanno had been opposed to the death penalty, and his personal writings reflected his struggle with applying such a sentence to anyone. Ultimately he decided that a statement had to be made at Nuremberg because of the scope and nature of the war crimes.<sup>14</sup> Thirteen of the officers, including Ohlendorf, were sentenced to death by hanging. Most showed little emotion when hearing their sentence. The rest received lengthy prison terms based on their level of involvement in the massacres.

Musmanno's time in Europe during the war strengthened his vision of a morally black and white world that required constant vigilance against forces of totalitarianism and corruption. He had investigated and heard disturbing first-hand accounts of slaughter and an unchecked and abusive government. So when he was handed a pro-communist pamphlet while walking on Grant Street in 1948, it drove him to action. He learned that the Communist Party headquarters in Pittsburgh was in the building directly across the street from the Allegheny County Courthouse where he worked every day, so he spent the next two years trying to convince local and state government officials to find a way to shut it down. Finally, in 1950, he took two Pittsburgh detectives with him to investigate the office for himself. The office was full of pro-communist pamphlets and books and posters critical of American foreign policy. He later described the experience in his book *Across the Street from the Courthouse*:

Suddenly I seemed to have been jet-planned across the Atlantic Ocean for I saw myself once again in Berlin, Vienna, Prague or Belgrade looking upon the familiar sights of hammer-and-sickle rendezvous I had known across the sea. Here was Russia with all of its ominous threats against the peace and tranquility of the world's population, including particularly the people walking self-assuredly on Grant and Diamond Streets four floors below.<sup>15</sup>

He spent the next decade railing against communism in America, trying to have the Communist Party outlawed and prosecuting its leaders. Though most convictions were overturned by the United States Supreme Court, he had widespread popular support. It was during his anti-communist crusade that he was elected to the Pennsylvania State Supreme Court. Though modern historians have been quick to label Musmanno another McCarthyite, his anti-communist efforts began immediately upon his return in 1948 and can also be viewed as an extension of his own vision of himself as a lifelong crusader against injustice, totalitarianism, and threats to the common man. There were certainly political motivations, as there had always been, but communists replaced the Nazis as the enemy of the day and Musmanno planned on doing everything he could to stop them.

Later in his life, Musmanno revisited his experiences at Nuremberg when he served as a witness for the prosecution in the 1961 trial of Adolf Eichmann in Israel. Israeli agents had captured the escaped Nazi in Argentina in 1960 and brought him to Israel to answer for his crimes against the Jewish people and crimes against humanity. Against the advice of some of his American colleagues, Musmanno made the journey to participate in the trial of the man who was ultimately responsible for the work of the *Einsatzgruppen*. The judge testified not only about information given to him by the defendants at Nuremberg, but also in the interviews that he conducted of Hitler's associates. When the five-week trial

was finished, the United Press International reported that of all the testimony, Musmanno's had been the most damaging to the defense.<sup>16</sup> Eichmann was convicted, and executed the following May.

Musmanno later wrote that not trying Eichmann "would have been to commit an unforgivable offense against the sanctity of the human race."<sup>17</sup> It was a sentiment he held for all of the war criminals at Nuremberg. Until his death in 1968, he continued to support the idea of a World Court that delivered justice for the victims of barbaric atrocities in a civilized manner. ❁

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<sup>1</sup> *Biographical Outline of Pennsylvania Supreme Court Justice Michael A. Musmanno*, Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>2</sup> Biography Files. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>3</sup> Sacco and Vanzetti Record Group. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>4</sup> Coal and Iron Police Record Group. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>5</sup> Biography Files. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>6</sup> Personal Journal 1918. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>7</sup> Glenn Infield, "The Captain and the Poison Gas." *Argosy*. February, 1963.

<sup>8</sup> Interviews of Hitler's Associates Record Group, Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>9</sup> Ibid.

<sup>10</sup> Soviet Repatriation Board Record Group. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>11</sup> *Einsatzgruppen* Trial Records. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>12</sup> Michael A. Musmanno. *The Eichmann Kommandos* (London: Peter Davies, 1962), 228-235.

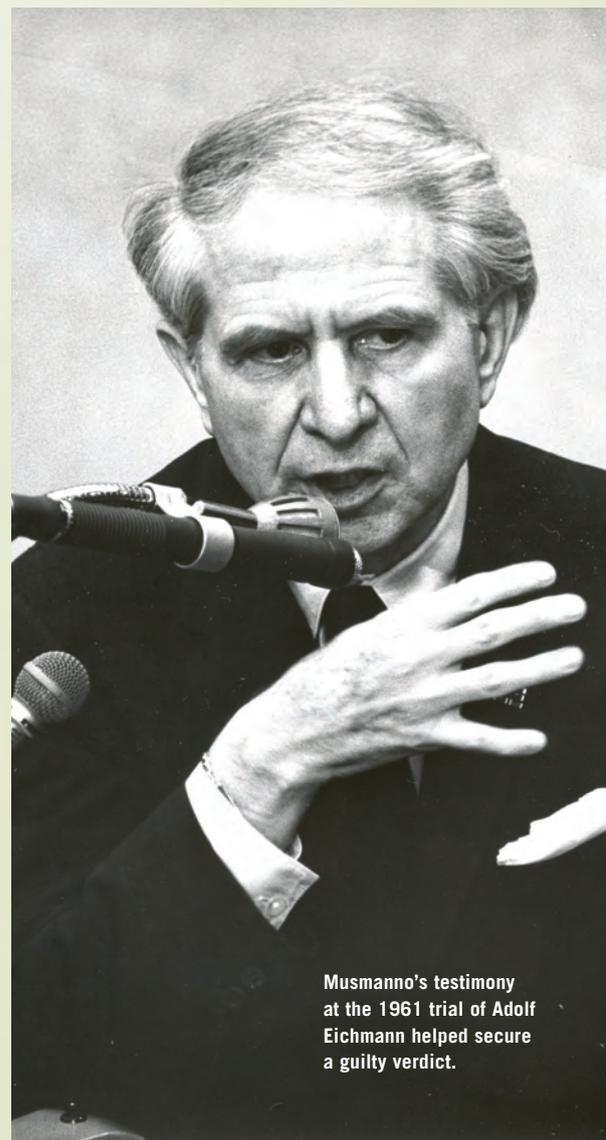
<sup>13</sup> Ibid.

<sup>14</sup> Nuremberg Record Group. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>15</sup> Michael A. Musmanno. *Across the Street from the Courthouse* (Philadelphia: Dorrance & Company, 1954), 54.

<sup>16</sup> Eichmann Trial Record Group. Michael A. Musmanno Papers, University Archives and Special Collections, Gumberg Library, Duquesne University.

<sup>17</sup> Albert Averbach and Charles Price, eds. *The Verdicts Were Just* (Rochester: The Lawyers Co-operative Publishing Company, 1966), 128.



Musmanno's testimony at the 1961 trial of Adolf Eichmann helped secure a guilty verdict.