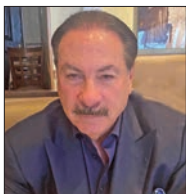


OPINION

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Studying the legacy of the lawyers of the Third Reich



Howard
FENSTERMAN

Genocide doesn't just spontaneously explode into carnage. It takes calculated planning to implement mass murder on such a scale that it becomes the deliberate policy of a regime.

And, shockingly, it can begin in the courtroom.

That it is why the Hon. Jeffrey Cohen, of counsel to our firm, and a former Justice of New York's Appellate Court, is participating in a symposium on Nazi Germany in cooperation with the NYS Judicial Institute and the Justice Brandeis Law Society. Such a forum allows the legal community to closely examine the role of the lawyers, judges, and a judicial system that under the Third Reich willingly engaged in the perversion of its nation's laws, rights, and ultimately, those they deemed as "untermenschen" or subhuman.

In the road to the gas chambers the Nazis sought to create a legal framework that not only allowed for genocide but made it inevitable. Upon assuming power a punishing series of draconian laws were passed that quickly stripped away the rights of Germany's Jewish citizens. These actions were deliberately designed to isolate Jews within the society, dismissing them from their professions in medicine, education, science, media, and the arts. Additional laws were passed that physically isolated them from German life, including a strict prohibition against Jews having relationships with Aryans. For some the punishment would be death.

There would be no appeal, review, or desire by Germany's legal community to challenge the annihilation of Jewish citizens or the Nazi's destruction of justice. A commentary on this issue highlighted by one brave jurist, Lothar Kressig, described as a county court judge, who issued injunctions seeking to prevent hospital patients deemed unfit by the Nazis from being sent to extermination camps. His was a lonely and temporary victory. He was eventually forced to resign.

What were the triggers that allowed German courts to become co-conspirators in genocide? Legal scholars caution that under the Nazi's, German law lacked a foundation dependent on "higher law," one grounded on constitutional language or defined ethical standards. The second breach in the defense of courtroom integrity was that there was no separation between the executive and judicial branches of Reich government. As a result, Hitler had enormous personal power in the courtroom with the legal ability to intervene in any case he thought appropriate along with the means to redirect the sentence if he felt it was too lenient.

A number of Nazi judges would be brought to trial after the war, part of the Nuremberg Tribunal's mission to confront, expose and prosecute the monstrous crimes committed by "ordinary" men and women in the service of the Third Reich. Prosecutors presented evidence that sought to reveal how Nazi judges and prosecutors forcefully pursued forced sterilization, mass extermination, capital punishment for even the most minor offenses, and, ultimately, the destruction of human rights. Not every Nuremberg defendant would be found guilty as democracy's rule of law was applied in the courtroom.

Yet the trial afforded the world to examine how the Nazi judiciary functioned and, more important, how men who had long embraced the law and its principles of justice could so easily participate in its perversion under the new Nazi order. The lessons are there for examination and discussion and for each generation to hear and heed the legacy of the Nazi's destruction of justice.

Today, as evidence of shocking war crimes are revealed almost daily in Ukraine, we are challenged to ask how will the world respond to this latest example of genocide? And where is the Russian legal community who should be at the ramparts demanding their nation retreat from such atrocities? It would be best for every democracy to review the past and recognize the present with an appreciation that it is the integrity and strength of the judicial system that stands between us and unimaginable crimes against humanity.

Howard Fensterman is the Managing Partner and Co-Founder of Abrams Fensterman, LLP, New Hyde Park.

We must do more to protect our workers

By JOHN DURSO

Last week, we watched another tragedy develop in which a gunman entered a public space and took innocent lives. This time, Black employees and shoppers were targeted at a Tops Friendly Market in Buffalo, where 10 people, including four Tops employees—one of whom was a member of UFCW Local 1—were shot and killed in an act of racist domestic terrorism.

Grocery workers have already had an incredibly challenging two years navigating their own health and safety on the front lines of the pandemic. They are the people we hailed as heroes, the essential workers we depended upon to make it through the worst of the pandemic. The last thing they should be worrying about now is an armed individual coming into their workplace with a motive.

This shooting was another preventable act of gun violence. In 2021, there were at least five separate incidences of gun violence in supermarkets across the country. The deadliest shooting of 2021 left 10 dead at a King Soopers grocery store in Boulder, Colo. My union, Local 338 RWDSU/UFCW, lost one of our own in April after a gunman opened fire at a Stop & Shop in West Hempstead and killed longtime member, Ray Wishropp.

People don't go to work thinking there's a chance they won't come home. They shouldn't have to think about the possibility of deadly violence occurring at their workplace—it is critical that this trend does not continue. We need to be doing more to protect working people.

I'm not saying we must take guns away—but more needs to be done to monitor extremism, misinformation, and people who pose a risk to the safety of our society. The Buffalo shooter had already been investigated for making threatening statements about wanting to carry out a mass shooting last year. Statements like that should have been a clear sign that this was someone who should not have been allowed to legally purchase a gun.

Gun violence is an endemic in our country. We must call on elected officials on a state and federal level to establish common sense gun legislation. According to the FBI, there were 40 active shooter incidents in 2020, the highest rate in two decades.

We cannot continue to stand by and allow these senseless, preventable acts of violence from occurring. Our elected officials must listen to the constituents who voted them into office and move to ensure that no more lives are taken because people who shouldn't be allowed to purchase guns can walk into a gun shop and buy a deadly weapon without an issue.

Our hearts break for the families of those who lost their lives in the Buffalo shooting, and our brothers and sisters at UFCW Local 1 whose members worked at the Tops Supermarket and provided a key service to their community. We know that moments of senseless violence will leave an impact for a long time to come.

John Durso is president of Local 338 RWDSU/UFCW and the Long Island Federation of Labor.

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THE ALLIANCE
OF AREA BUSINESS PUBLICATIONS

Long Island Business News (ISSN 08944806), (USPS No. 318-380) is published weekly by Long Island Business News Inc., 2150 Smithtown Ave., Suite 7, Ronkonkoma, N.Y. 11779-7348. Periodicals, 52 issues in 2021 plus 4 additional issues in the months of March, October, November and December mailed separately and periodicals postage paid at Ronkonkoma, N.Y. 11779 at additional entries. Phone: 631-737-1700, Fax: 631-737-1890.