



*JAMES TENNEY BRAND*

*A Life in the Law: Country Lawyer, Oregon Supreme Court Justice,  
Presiding Judge at Nuremberg War Crimes Trial of Nazi Judges*

Paul J. DeMuniz

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*To the past generation of men and women who sacrificed  
so much to save the world from Nazi tyranny.*





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## *Introduction*

During my tenure as chief justice of the Oregon Supreme Court, I served on the board for the Conference of Chief Justices and chaired the conference's education committee. In that capacity, I learned that the Holocaust Memorial Museum in Washington, D.C. had a traveling educational program called "Law, Justice, and the Holocaust: How the Courts Failed Germany." I arranged for the museum to present its program at one of our conference meetings. The program was so thought-provoking and well-received that I later had it presented to all of Oregon's state judges as well. It was through my interactions with the Holocaust Museum that I first learned that Oregon Supreme Court Justice James Tenney Brand had served on the Nuremberg war crimes tribunal tasked with trying high-ranking judges and officials of the German Ministry of Justice. At that time, I also learned that playwright Abby Mann had consulted with Brand in writing Mann's play *Judgment at Nuremberg*, making use of the personal files, transcripts and correspondence that Brand had generated during his service in Germany. Indeed, Justice Brand was thought to have been the inspiration for Spencer Tracy's portrayal of Judge Dan Haywood in the 1961 movie version of the play.

Today, few Oregon lawyers and judges are familiar with Justice Brand's life or his role at Nuremberg. From my perspective, however, James Tenney Brand is an important figure in Oregon's judicial history, and his life and legal career deserve to be fully and publicly documented. Fortunately, there is a wealth of information about Justice Brand's involvement in the Nuremberg Trials that can be found in his personal writings and documents. Those materials are publicly available due to the generosity of Justice Brand's son, Thomas Bradstreet Brand,

who donated them to the Willamette University Mark O. Hatfield Library in 2001. In addition, other important materials exist that have been collected and preserved by Justice Brand's living grandchildren. My special thanks to them for generously allowing me the privilege of examining those documents in researching this book.

Justice Brand was profoundly affected by the acts that came to light in his Nuremberg courtroom. So much so that, in his personal copy of the published Nuremberg judgment he authored, he left a hand-written note: "The Nuremberg trials and the judgments thereunder will for centuries stand as bastions of human liberty and teach men in all ages they cannot violate the laws of God, justice, morality and decency and excuse their acts in the name of national expediency."

Unfortunately, subsequent generations have, to some degree, become calloused to the effects of fascism in general, and to the evil inflicted on the world by Nazi Germany in particular. I hope that this book will, in some small measure, reinvigorate in readers a healthy awareness of, and resistance to, totalitarianism in whatever future form it may take, while at the same time making the life of James Tenney Brand—small-town lawyer, Oregon Supreme Court justice, and presiding judge at Nuremberg—meaningful and inspirational to subsequent generations.



*James Tenney Brand*



## *Prologue: Judgment at Nuremberg*

In 1959 Abby Mann's play, *Judgment at Nuremberg*, was performed live on the CBS television program *Playhouse 90*. The play, a dramatic account of the United States' war crimes prosecution of German Ministry of Justice officials after World War II, was followed in 1961 by a movie of the same title produced by Stanley Kramer using a screenplay that was also written by Mann. The movie featured many popular movie stars of the day: Spencer Tracy starred in the pivotal role of Dan Haywood, a judge from the state of Maine appointed to preside over the Nuremberg trial panel, Richard Widmark portrayed a hard-charging Army prosecutor, and Maximilian Schell—whose performance won the Academy Award for Best Actor—played the German defense attorney representing the highest-ranking German judge on trial, a role filled by Burt Lancaster. Marlene Dietrich, Montgomery Clift, William Shatner (later of *Star Trek* fame), and Judy Garland all had supporting roles in the film, with both Clift and Garland receiving Academy Award nominations for their performances. Abby Mann won the Academy Award for Best Screenplay.

Although Spencer Tracy did not win an Oscar for his performance in *Judgment at Nuremberg*, movie critics nevertheless spoke highly of his role in the film. As one wrote in the trade publication *Variety*: "Tracy delivers a performance of great intelligence and intuition. He creates a gentle, but towering figure, compassionate but realistic, warm but objective."<sup>2</sup> What few knew at the time, however—and fewer realize today—was that Tracy's character in the movie was not drawn solely from screen writer Abby Mann's imagination. It was, instead, built upon

the real-life judicial performance on the world stage in Nuremberg of James Tenney Brand, an Oregon lawyer and Oregon Supreme Court justice. This is his story.



# CHAPTER ONE: A FAMOUS FATHER AND FAMILY ROOTS IN COLONIAL AMERICA

WHEN JAMES TENNEY BRAND entered the world on October 9, 1886, his father, Reverend James Brand, was 52 years old and the well-known Presbyterian pastor of First Church, a congregation integral to the religious identity of Oberlin, a small city in northern Ohio. First Church and the city had been joined at their beginnings. Oberlin was founded in 1833 by two Presbyterian ministers seeking to create a religious community that would closely adhere to biblical doctrine.<sup>3</sup> They named the community in honor of Johann Frederick Oberlin, an Alsatian minister who preached throughout the remote regions of France in the late seventeenth century. A year later they founded the Oberlin Collegiate Institute—eventually Oberlin College—with the intent of training missionaries to take God’s word to the people of the American West, white and native alike.<sup>4</sup>

Although Justice James Brand’s later success in the legal profession was likely derived from Brand’s combination of keen intellect and hard work, it is also likely that his parents’ intelligence, rectitude, and profound commitment to education provided a significant launching pad for their son. The Reverend James Brand was born in 1834 in a small log cabin in Three Rivers, Quebec, Canada. Although he could read and hungered for knowledge as a child, he received no formal education in Canada. Late in his teens, however, he made his way to Saco, Maine, where he lived with a sister while working as a carpenter. Eventually, the pastor of the church he attended told him that the congregation

could provide some financial support for Brand's education so long as he was willing to enter the ministry. With that understanding in place, Brand entered Phillips Andover Academy while in his early 20s, where his advanced age made him a "man among boys." He graduated from Phillips Academy in June 1861.<sup>5</sup>

At age 27, Brand entered Yale College where he became the "patriarch of the class, its religious leader, and its poet." However, when the Civil War broke out Brand, having "grown up from childhood with [an] intense anti-slavery feeling," felt the need to "[contribute his] share to the cause of the country" and enlisted with the Connecticut Volunteers in 1862. In basic training in Arlington Heights, Virginia, he was appointed Color Sergeant of his regiment, requiring him to carry the regimental flag at the forefront during combat—an immediate target for the Confederate forces. During the first combat he saw at Fredericksburg, Brand "was wounded through the shoulder" early in the afternoon and lay on the battlefield between the two opposing forces until dark, when he managed to make it back to Union lines. Brand then spent six weeks in a hospital in Alexandria.

The elder Brand next fought at Chancellorsville and later at Gettysburg. Brand's regiment originally had 875 men. However, earlier battles had reduced the regiment to 75 men when the regiment's fighting began at Gettysburg. On the second day of fighting at Gettysburg, Brand's unit, the 27th Connecticut, reduced to 38 men "made a desperate charge down through the 'valley of [the shadow of] death' across the wheatfield." The ensuing battle that history would subsequently remember simply as "The Wheatfield" saw some of Gettysburg's bloodiest hand-to-hand fighting. As the battle roiled around him, Brand navigated a murderous crossfire to rescue his disabled regimental commander and carry him to safety; that act would later earn Brand a medal for heroism. In 1885, when survivors from The Wheatfield gathered there at Gettysburg to dedicate a monument to their fallen comrades; the Reverend James Brand gave the oration at the ceremony that followed.<sup>6</sup>



Gettysburg was Brand's last battle. He returned to Yale, graduated in 1866, and then spent another year at the Andover seminary preparing for the ministry.<sup>7</sup>

Juliet Hughes Tenney graduated in 1869 at age 20 from Abbot Academy, an institution also located in Andover, separated by a fence from institution that Brand had attended. It is likely that Juliet and James met while both were living in Andover and married sometime before 1873. The couple's first two children were girls, Mary, born in 1878, and Helen born in 1882.<sup>8</sup>



*Rev. James Brand and Juliet Tenney Brand, father  
and mother of James Tenney Brand*

By 1873 Reverend Brand had become pastor of the important and powerful First Church in Oberlin, where he served until 1899.<sup>9</sup> As pastor of First Church, the elder Brand was a prominent community figure, noted for his powerful oratory and his stance against the retail

sale of tobacco, alcohol, and the operation of billiard halls, positions he advanced with determination as a leader in the Anti-Saloon and Temperance movements of 1880s Oberlin.<sup>10</sup>

In 1884, Iowa College awarded Reverend Brand a Doctor of Divinity Degree, after which he was referred to as Dr. Brand. In addition to pastoring First Church for 26 years, Dr. Brand also wrote books and papers that were distributed both locally and nationally, among them a work entitled *The Beasts of Ephesus*, published in 1892. Dr. Brand's book provided advice to young Christians on conquering the "the world, the flesh and the devil," as Saint Paul described the spiritual opponents he battled at Ephesus. That volume is still in print today.<sup>11</sup>

It is through his mother, Juliet, that Justice Brand's family roots extended into the soil of colonial America. Brand's mother traced her lineage to early Puritan leaders, including two Massachusetts Bay Colony governors, Simon Bradstreet and Thomas Dudley, as well as Anne Bradstreet, daughter to Thomas, and wife to Simon. Anne Bradstreet married her husband when she was sixteen years old in Northampton, England. Together with her husband and her parents, she emigrated to America aboard the *Arbella*, as part of the Winthrop fleet of Puritan migration in 1630. Anne Bradstreet would go on to become recognized as America's first female poet, while both her father and husband, in addition to serving terms as early colonial governors, became founding fathers of Harvard College, with Thomas Dudley serving as a signatory on the college's original charter.<sup>12</sup>

## CHAPTER TWO: LIFE AND EDUCATION IN OBERLIN, OHIO

TRACING A FATHER'S INFLUENCE on a son is always a difficult proposition. That is particularly true in the case of James Tenney Brand. Brand's father died when the younger Brand was only 12 years old and little information exists today about his boyhood in Oberlin.

However, it seems reasonable to conclude, that his parents' high level of education, together with his father's unchallenged rectitude and over-arching prominence in the community, were significant in Brand's early years, factors that motivated him to excel as a student, and conduct his young life in accordance with the norms and values he had absorbed from his family. Brand excelled academically despite suffering from migraine headaches, which he believed were caused by the requirement that he write with his right hand in grade school, when he was definitely left-handed. By the time Brand had graduated high school he was a tall, slender young man with a lean, bespectacled face that reflected a powerful intellect.

Following high school, Brand entered Oberlin College and graduated with a B.A. degree in 1909. While at college, Brand was active in student affairs becoming class president, president of the student senate, and captain of the college's intercollegiate debate team.<sup>13</sup> Brand's participation on the debate team was consistent with his father's early efforts to educate himself, one of which was to join a local debating club while working as a carpenter in Maine.

Growing up, Brand suffered from a sinus condition so severe that doctors eventually advised him that he would enjoy better health in the western United States where the climate was different from that of northern Ohio. It is doubtful, however, that Brand's doctors would have considered the damp Oregon coast an ideal destination for a young man with severe sinus problems. Nevertheless, after his graduation from Oberlin, Brand ventured to Oregon, where he worked first on his brother Charles' apple orchard near Roseburg. Eventually, however, he joined the United States Forest Service and worked from 1909 to 1911 as a forest ranger on the southern Oregon coast near a town then known as Marshfield, renamed Coos Bay in 1941.<sup>14</sup>

In 1911, Brand was admitted to Harvard Law School and awarded several scholarships before graduating with a law degree in 1914.<sup>15</sup> Brand likely had little trouble in being accepted to Harvard's law program since he had been an excellent student in college and was, moreover, descended from two of Harvard's founders.



*James Tenney Brand. Baby in mother's arms, circa 1888*





*Brand graduated from  
Oberlin College in 1909.*



*The Harvard Law  
graduate, 1914*



*Brand on horseback during his time with the  
U.S. Forest Service, 1909-1911*



## CHAPTER THREE: A LAWYER RETURNS TO OREGON

IN 1914, HARVARD LAW graduates would have had their pick of multiple high-powered and lucrative career opportunities in places like Washington, D.C., New York, or Boston. For his part, James Brand, chose a career path that did not appear to overtly capitalize on his Harvard pedigree. Decades later, however, Brand's Ivy League legal education would prove pivotal in his appointment to the Nuremberg military tribunal.

No record exists of the reasons Brand chose to return to the small coastal community of Marshfield, Oregon to begin his law practice. Perhaps Brand returned because he enjoyed his time there as a forest ranger, or perhaps he was simply comfortable with both the image of the small-town lawyer and the reality of a professional's life in a smaller community, or according to family lore, he returned to Marshfield because he thought it would become the next San Francisco. Whatever the reasons, Brand practiced law in Marshfield as a partner in the firm of Peck and Brand.<sup>16</sup> He became the Marshfield city attorney in 1916 and served in that capacity until 1927.<sup>17</sup>

In 1916, Brand married his childhood friend Irene Morley, a relationship that began when the pair were children in Rocky River, Ohio, where both families summered. Like her husband, Irene Brand was also a college graduate, with a teaching degree. The couple eventually had three children, a daughter Morley, born in 1917, and two sons, James, born in 1919, who died of spinal meningitis in 1929, and Thomas, born in 1926.<sup>18</sup>

During his 13 years of private law practice on the Oregon coast, Brand was both an active trial litigator and appellate advocate. As a lawyer in, and the attorney for, the town of Marshfield, Brand handled all manner of cases. The 17 appeals to the Oregon Supreme Court in which he is listed as counsel reveal that Brand's law practice encompassed municipal matters, personal injury, property damage, criminal law, business and corporate law, and forest practices.<sup>19</sup> Brand's record as an appellate lawyer was mixed, however, most of the cases he lost on appeal before the Oregon Supreme Court involved municipal matters that he had argued in his capacity as the Marshfield City Attorney.

In 1927, Brand was appointed by Republican Governor Isaac Patterson to the circuit court bench in Oregon's Second Judicial District comprising Coos, Curry, Douglas, Lincoln, Benton, and Lane counties.<sup>20</sup> Just as he had done as a lawyer, Brand handled all manner of cases as a trial judge and his deportment on the bench quickly earned the respect of the lawyers appearing before him, his fellow jurists throughout the state, and the public. Very few of the rulings he issued during his fourteen years as a circuit judge were reversed by the Oregon Supreme Court. Moreover, for several years during the depression of the 1930s, Brand voluntarily reduced his judicial salary by fifteen percent, an act that angered some of his judicial colleagues.<sup>21</sup>

From 1934 through 1935, Brand served as president of the Oregon State Bar Association. He was an active Bar president, at one point highlighting problems with Oregon's parole and probation system and advocating for change. In March 1935, he travelled to Seattle to address the Seattle Bar Association where he delivered a speech entitled "The New Deal and the Constitution."<sup>22</sup>

In 1937, Brand was a state leader in opposing President Roosevelt's proposal to change the number of sitting justices on the United States Supreme Court (Roosevelt's so-called court packing plan). In that capacity, he argued forcefully in various writings and speeches that Roosevelt's plan threatened the independence of the judiciary, as well as independent speech and thought.<sup>23</sup>



During his time in Marshfield, Brand was also active in the community, serving as a member of the local school board, president of the Marshfield Chamber of Commerce, and chairman of the Coos Bay Boy Scouts. Mrs. Brand was no less civically active in the Marshfield community, serving as a member of the Marshfield City Council, and the Coos County Public Welfare Commission.<sup>24</sup>



*Brand with his son, Tom, circa 1926*