



Episode 97: Palace of Justice
Air date: August 17, 2018

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Benjamin Ferencz: Greetings to you all. My name is Benjamin Ferencz. And I'm being interviewed in Delray Beach, Florida, with the request to give you an outline of what I have been doing with my life and some things which may be of interest and hopefully will lead to a more humane and better world.

Phoebe Judge: I met Benjamin Ferencz at his home. We sat side-by-side in two computer chairs at his desk. And if I had any idea that I was going to be the one leading the conversation, I quickly learned I was wrong.

Benjamin Ferencz: Where did I get these peculiar ideas? Well, I was born 99 years ago, in a little village in Transylvania. Now, I know that most of you never heard of Transylvania, although you have some connection with my uncle, Dracula. Of course, there is no such uncle, but there was a Transylvania.

Phoebe Judge: Everything about him seems much younger than his 99 years. Part of that might be because of his morning routine.

Benjamin Ferencz: I wake up usually around 7:00 in the morning. The first thing I do is a physical routine. Right before I get out of bed, I raise my feet and I wiggle my toes and turn my legs around in circles and do that for quite a bit. And then, I do 25 sit-ups in bed. Then, get out of bed. Right. Then after some toiletries, I go to another room, I breathe — open the door, take deep breathing, 25 times in and out, while I bend over and do other things waving my hands around. Then I do the world famous, world famous... 125 push-ups and then of course I go swimming.

Phoebe Judge: I've never met anybody like him. He has a wild sense of humor that I wasn't expecting from someone, who's had such a serious career. Benjamin Ferencz is the last surviving prosecutor of what's been called the largest murder trial in history, a trial with more than a million victims.

I'm Phoebe Judge, this is Criminal.

Benjamin Ferencz: My sister was born in the same bed that I was born a year and a half earlier. And the one thing we had in common, whether — whatever it was called, Hungary or Romania, was that they persecuted the Jews and there was no work for them. So, my parents decided, after they had two little babies, to take up the babies and look for a better place to live. We sailed away on a ship across the Atlantic to New York in December of 1921. We traveled third class because there was no fourth class. We arrived in New York Harbor with no money, no friends, no language, no skills. Let me skip along because it's been a long life.

Phoebe Judge: Benjamin Ferencz was admitted to a New York City high school for gifted students and went on to enter Harvard law school.

Benjamin Ferencz: Then the war broke out while I was in school. Japan attacked the United States. Everybody that I knew went down to enlist, I went too.

Phoebe Judge: He wanted to work in intelligence, but he wasn't eligible because he was an immigrant. His second choice was to become an air force pilot, but he was rejected because they said he wasn't tall enough. So, he enlisted in the army and was assigned to the 115th AAA Gun Battalion. He landed on the Normandy beaches. And in the coming months fought in most of the major battles in World War II. Normandy, the Siegfried Line, final Battle of the Bulge. And then, because he'd done a lot of research on war crimes in law school, he was assigned to work on the newly forming U.S. war crimes branch.

Will you explain to me what a war crime is?

Benjamin Ferencz: A war crime, technically, is simply a violation of the rules of warfare, which have been agreed to in a number of treaties. Most of them signed in the Hague, under sponsorship of the Swiss government. For example, we've had war crimes beginning since war began. Wars began with little David hitting Goliath in the head with a rock. Well, times have changed. When we began... when the Germans dropping poison gas into the trenches in World

War I and they were dying horrible deaths, the world came together with the first Hague conventions, saying some things you cannot do in a war. You cannot shoot your enemy in the back, you cannot refuse to take prisoners, you cannot use poison gas. Trying to make war more humane. That is absurd, absolutely absurd, I can assure any of your listeners that when a war is on, the war crimes rules is laid down in the war are forgotten. You — problem is, you kill the other guy before he kills you.

Phoebe Judge: Most of the cases he investigated involve German soldiers killing American prisoners. He says he sometimes had to dig up bodies of American pilots who had been shot down and beaten to death. He would write a report describing the crime, listing suspects and naming which laws of war had been violated. And then, his assignment changed.

Benjamin Ferencz: We begin getting reports that there are people coming out of, it looks like war camps, and they're all dressed in something that looks like pajamas and they all look like they are dying, they're skinny.

Phoebe Judge: The first concentration camp Benjamin Ferencz was ordered to visit was one of the largest, Buchenwald. An estimated 56,000 prisoners were killed there before it was liberated in 1945. Concentration camps were being liberated one after another, and Benjamin Ferencz was assigned to get to them and collect as much evidence as possible, as quickly as possible. He was looking for official camp records, registries of who had been killed and which German guards and officers had done the killing.

How many camps did you actually go to, to take reports?

Benjamin Ferencz: They must have been about ten camps. I didn't... I didn't count them, I moved as fast as I could from one camp to another. Dachau, Buchenwald, Mauthausen, Flossenburg, a whole series of camps, as fast as I could get. The front was moving forward rapidly and I was following the front. I was getting reports from headquarters as to where the action was. And I would seize all the records in the camp, I would go to the camp commander, or the German who was in charge and the American who was in charge. And I would say, "I'm here on orders of the President of the United States and I want ten men immediately to surround the [German word], which is the office where the records are. Nobody was in or out without my permission. And I'd seize then the record keeping office where they kept records, the Germans, God bless 'em, are very careful when they murder someone, they get a list first, they want to know his name, they want to know how old he is, where he came from. And I had the Sterbebücher, the Sterbebücher were the death registries of how many people were killed. One of the inmates, he grabbed me when I came in and he hugged me and he said, "I've been waiting for you" ... I can't — I have difficulties recalling these stories because I'm still emotionally affected with what I saw. And he led me to a place near the barbed wire electrified wire around the camp. He had a shovel with him and he dug up a little wooden box.

Phoebe Judge: Inside the box were identity cards, little booklets like a passport, the German soldiers would have stamped whenever they came and went.

Benjamin Ferencz: When this little passport book was filled, they got another one. He was supposed to destroy the old one. He didn't, he kept them. Now every time he did that, he took his life into his hands. They would have shot him dead on the spot if they had seen what he was doing. And he held them, and he buried them in a box, waiting for the liberation day. That, of course, was an invaluable piece of evidence as to who was in the camp, at what time.

Phoebe Judge: What were you thinking after seeing all the things that you'd seen?

Benjamin Ferencz: I was not thinking. I shut off my brain. I said this is not real. These are not human beings, these aren't victims here, I can't stop and think and — just get your job done, get your job done and get the hell out of here. There was disease rampant, dysentery, diarrhea, rats, filth. And get out and get out and write your report. And I wrote my reports first chance I got, you know, and — with all the information, who was in the camp, who were the commanders, how many people were there? It was necessary.

Phoebe Judge: When he visited the Ebensee concentration camp in Austria, he described in a letter that prisoners were so frail, many were being carried like babies to a field hospital. He wrote, "No one who has not seen it can visualize the scene."

Benjamin Ferencz: The inmates caught one of the guards and they beat him up. I was there when they caught him, when they beat him. They then took him to the crematorium and put him in, alive. They strapped him to the gurney, which is what they used, metal gurneys, to slide the bodies into the oven, they put him in, started to cook him and they pulled him out. He was still alive, they beat them up again and then they put them in again. And they cooked him slowly. These were the prisoners who were killing the guards. Vengeance, that's the inevitable outcome. Did I try to stop it? I did not. Could I have stopped it? Probably not. Do I remember it? I do. What's the next question?

Phoebe Judge: On the day after Christmas in 1945, he was discharged with a rank of sergeant. He went back to New York, got married to his longtime girlfriend Gertrude, and planned to practice law.

At the same time, a trial was beginning in Germany. Leaders of the Nazi Party were being prosecuted by an international military tribunal. The trial was taking place in a town called Nuremberg, at the Palace of Justice. This was the first Nuremberg trial. Nothing like it had ever been done before.

It was controversial. The guilt of the defendants wasn't really in question. So, some wondered about the trial's legitimacy. But the American chief prosecutor, Supreme Court Justice Robert Jackson, said that it was important to create a detailed record of what had happened under Hitler's regime. He said that if a record was not made, "future generations would not believe how horrible the truth was."

Twelve more trials would follow, and Benjamin Ferencz was sent to Berlin to search Nazi offices and archives for evidence of crimes committed not only by Nazi leaders, but also doctors, lawyers, and businessmen.

Benjamin Ferencz: So, we want to put the doctors on trial for medical experiments, we want to put the lawyers on for perverting the law, we want to put the SS on for mass murder, we want to put the foreign ministers on trial for trying to hoodwink the rest of the world. We want to explain how it was a civilized country like Germany could allow these things to happen and to make them happen, to do these things which they did.

Phoebe Judge: Over the course of his research in Berlin, he identified another group he thought should be tried, the Einsatzgruppen.

Benjamin Ferencz: The word 'Einsatz' means action, 'gruppen' is groups and these action groups were assigned to kill without pity or remorse, every single Jewish man, woman or child they could lay their hands on. And to do the same with Gypsies and anybody else who might be a suspected potential enemy of the Reich. And there were 3,000 men divided into groups A, B, C, and D. I came upon reports of these Einsatzgruppen, daily reports, top secrets sent from the front to Berlin, where they were consolidated and sent out, and I had a distribution list of 99 people who later said I didn't know anything about it. And they reported faithfully who was the commander in charge, how many Jews they killed, in which town, and I had a little adding machine, I added them up when I reached a million — over a million people murdered by these groups. That's it, we have to put out a new trial.

Phoebe Judge: Benjamin Ferencz flew the records to Nuremberg and showed them to the chief prosecutor and asked for an additional trial.

Benjamin Ferencz: He said, "No, we can't. Depending on his approval of the budget, we cannot expect any additional trials because there's a lot of opposition to it, as well. And all the lawyers are assigned, the other trials have already started." And I said, "You cannot let these million murderers go. This is the biggest murder trial in history. We cannot just simply say, because we ran out of space or money. You can't let them go." And he said, "Well, can you do it in addition to your other work supervising the search for documents?" I said, "Sure." He said, "OK, you're it." So I became the chief prosecutor of what later was known as the biggest murder trial in human history.

Phoebe Judge: Benjamin Ferencz was assigned to be the chief prosecutor for the Einsatzgruppen case. He was only 27 years old and he had never tried a case before. He says he'd never even been to court. There were 22 defendants, members of these special so-called "Action Groups."

Benjamin Ferencz: I said, look, I don't want to talk to these defendants. I had researchers that spoke German, German refugees. I want you to go down and interrogate this guy, I want to know everything about him, from the moment he was born. You get all the information back to

me. But I didn't want to talk to any of them. I said, I'll see them in the courtroom. And I didn't want to set up any human connection because I had picked the defendants and I had picked them out of a list of 3,000. We had the roster. All of them were high ranking, had six generals, something like that, don't remember the count. And I selected them.

Phoebe Judge: How did you... Why did you select those that were higher rank?

Benjamin Ferencz: Because responsibility begins at the top, it doesn't begin at the bottom.

Michael A. Musmanno: Lothar Fendler, how do you plead to this indictment? Guilty or not guilty?

Lothar Fendler: [Speaks foreign language.]

Michael A. Musmanno: Heinz Schubert, how do you plead? Guilty or not guilty?

Heinz Schubert: [Speaks foreign language.]

Michael A. Musmanno: We are now ready to hear the presentation by the prosecution.

Phoebe Judge: Here's Benjamin Ferencz.

Benjamin Ferencz: This was a tragic fulfilment of a program of intolerance and arrogance. Vengeance is not our goal, nor do we seek merely a just retribution. We ask this court to affirm, by international penal action, man's right to live in peace and dignity regardless of his race or creed. The case we present is a plea of humanity to law.

Benjamin Ferencz: And I didn't ask for the death penalty. I gave it very deep thought, what am I going to ask for? You got these 22 guys there, they have murdered over a million people, there's no question about their guilt. Should you chop them up into a million pieces and feed them to the dogs? I said, that would be ridiculous. Just hang them and shoot them, take them out and have a public display. I said, no, it would be ridiculous, still. I said, if you want to have any meaning to this trial, we have to be aware, first, that the victims were slaughtered because they didn't share the race, the religion, or the ideology of their executioners. I said, if I could turn that around and make it a crime to kill somebody because he doesn't share your race, your color, or your political persuasion, if you can get that a crime against humanity, if you can get that out, then you will protect future generations, at least to some extent, and it will be worthwhile and more meaningful than what you do with these 22 murderers.

Phoebe Judge: The 22 defendants were found guilty of membership in a criminal organization, war crimes and of committing crimes against humanity. 14 of the 22 were sentenced to death.

Benjamin Ferencz: My personal reaction was very somber. I didn't say, hooray, good for you, and so on. On the contrary, I got a splitting headache every time he said, "Tribunal sentences

you to death by hanging." Boom! It was like a hammer hitting me in the head. This tribunal sentences you to death by hanging, next, death by hanging, death by hanging, death by hanging. I thought my head was going to bust. And, in fact, we had planned, as is customary when the trial came to an end, the chief prosecutor had a party for his staff, and I had planned a party for my staff. And I couldn't go to my own party. I called home, must be in my house, I said I'm going to bed. So it was not one of joy or victory, it was a very somber experience I would say.

Phoebe Judge: After the trial, he and his wife, Gertrude, stayed in Germany. They had four children, all born in Nuremberg. He worked on restitution and reparations efforts and help return property to Holocaust survivors.

Benjamin Ferencz: If you do somebody a harm, a wrongful harm, you have an obligation to try to make good by either compensating him or trying to repair the damage done. That was a guiding principle, a very simple, principle of justice and with that and with no experience whatsoever in doing such a thing, which had never happened after a war where the victor... or the defeated has to pay off the victor, they had reparations, which never worked, but individual compensation never had been tried before and I said we do it now. Then after that, of course, after you stop the war, punish the criminals, set up compensations for the victims, the next step, the most important—prevent it from happening again. And that's what I've been doing ever since.

Phoebe Judge: In 1956, he returned to the United States with his family to begin a career in private law practice and he started writing about international law and speaking about his experiences at Nuremberg. His ideas were instrumental in the development of the International Criminal Court at the Hague. He gave the closing statement in the court's first case against a Congolese warlord. He's still working today, at 99. I asked him about retirement and he said he has no desire to play golf.

And you care for your wife?

Benjamin Ferencz: Of course, that's primary obligation number one, because we have the world record there, I'm sure. My wife, I married an older woman, she's about five months older than me, and we have been happily married since 1946. How many years is that?

Phoebe Judge: 72.

Benjamin Ferencz: It's 72 years. We've never had a quarrel. That's pretty damn good.

Phoebe Judge: How is that possible?

Benjamin Ferencz: It's very possible. First of all, I'm not suggesting we didn't have differences in opinion, but we never raised our voice, we never shouted, we never pounded the table because it's mutual respect and caring for each other. They have a funny word for that I don't

like, "love." I don't like the word because you can love a piece of cheese, you can love a lovely day, you know, I can love to go home, I'd love to finish this interview. If you say caring for somebody, that reflects better and my wife now needs my care. It's a take-home pay, you know, this is payback time.

Phoebe Judge: In 2016 Benjamin Ferencz quietly donated \$1,000,000 to the Holocaust Museum in Washington. The footpath next to the Peace Palace at the Hague was named after him.

In March of this year, Benjamin Ferencz celebrated his 101st birthday. We called him last week.

Benjamin Ferencz: [over the phone] Good morning.

Phoebe Judge: Hi, this is Phoebe Judge calling. I came to visit you in Florida a couple of years ago, and we sat on your back porch, and we spoke— [crosstalk]

Benjamin Ferencz: [crosstalk] Right.

Phoebe Judge: Yeah, well I just wanted to take a couple minutes to see how you're doing.

Benjamin Ferencz: Go ahead, you got me. Speak up, my left ear is 101, so speak a little louder and it'll be easier. Go ahead.

Phoebe Judge: Do you have any plans for Thanksgiving?

Benjamin Ferencz: When's Thanksgiving? I'll be thankful I'm not a turkey. [both Benjamin and Phoebe laugh]

Phoebe Judge: How did you celebrate your birthday?

Benjamin Ferencz: [chuckles] I never celebrated birthdays. I got all kinds of proclamations in my honor and stuff like that. But I celebrate every day by trying to get rid of my mail. I have at the moment 141 letters waiting for response. I'm busy as hell. I haven't been this busy in a hundred years. [Phoebe laughs] So, tell me quickly, what it is you need. [lightheartedly] We are now chatting. You wanted to chat? I said, "OK, chat."

Phoebe Judge: OK, I'll go quick 'cause I know you're a busy man. Are you still doing your morning routine? You used to do those exercises...

Benjamin Ferencz: Yes, I am. But the doctors stopped me from doing pushups. They said it was too much. So I stopped doing pushups.

Phoebe Judge: Do you still do one or two?

Benjamin Ferencz: Well, when nobody's looking I sneak in about 5 or 10. [laughs]

Phoebe Judge: You said you had 141 letters waiting for your attention! What are people writing to about? [Benjamin affirms] What do the letters say?

Benjamin Ferencz: Well, most of them they want money, one way or another. Or they want my opinion. They want me to go for an interview. That's what most of the correspondence. And then there are reports, like, market reports and news reports, things like that.

Phoebe Judge: So you're still working away.

Benjamin Ferencz: I'm still working away. And you can tell your viewers that my wife passed away about a year ago. She was a great helper to me. We were happily married without a quarrel. And I keep very busy and I've sold my home in New Rochelle, and I'm based here in Florida. The mayor had some celebration for me the other day. Few days ago, they declared it, I don't know, Ben Ferencz Day or something like that. [chuckles] So I got a lot of that kind of celebration, which keep me from doing constructive work. I'm still trying to save the world by substituting law for war. And I am not discouraged by anything. I have seen the progress which we have made, which is phenomenal. And I'm hoping still that we will think of our problems, planetary problems. We have to recognize we're all inhabitants of one small planet, and we must use the resources on our planet so that everybody can live in peace and dignity regardless of their race or creed or color. And we have a long way to go before that's generally accepted. And anything you can do to advance these humanitarian goals on behalf of everyone, the more I like it. And I appreciate it.

Phoebe Judge: You're optimistic.

Benjamin Ferencz: I am optimistic. I'm not discouraged. We have made progress, but we cannot in one human lifetime, in my life, reverse what has been idolized and hailed for centuries. And that is the glory of war. And I think the notion that war is glorious because it's so embedded, will take more than one human life to change it and turn it around. But we have made some progress and it requires keeping the subject alive and keeping the sentiments alive that I'm trying to spread.

Phoebe Judge: Well, I'm very glad to hear that you're well.

Benjamin Ferencz: Oh well! Well, I have no time to fool around with figures like that. [music comes in] [laughs] I'm 101, how old can I be?

Phoebe Judge: Well, listen, I know you're busy so, thank you very much for taking the time to talk to me now, and I'll let you get back to all of your hard work.

Benjamin Ferencz: OK, I'll do that. I appreciate you letting me go back. Keep finding, kids. Don't give up! [Phoebe and Benjamin laugh]

Phoebe Judge: I won't! Thank you so much. Have a good day.

Benjamin Ferencz: OK. Keep going. Nice to hear from you. Bye-bye.

Phoebe Judge: OK, bye-bye.

Criminal is produced by Lauren Spohrer, Nadia Wilson, and me. Audio mix by Rob Byers. Mathilde Urfalino is our intern. Special thanks to Michael Wilkerson. Julienne Alexander makes original illustrations for each episode of Criminal. You can see them at thisiscriminal.com, or on Facebook and Twitter, @criminalshow.

Criminal is recorded in the studios of North Carolina Public Radio.

I'm Phoebe Judge. This is Criminal.

[music fades out] [Radiotopia jingle]

END OF EPISODE.