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# MEASURE OF A MAN

An untried American prosecutor  
took on Nazi death squads—  
and found his life's work  
By Andrew Nagorski

Benjamin B. Ferencz, 27,  
presents his case in  
Nuremberg in 1947 at  
what the Associated Press  
called "the biggest murder  
trial in history."





In spring 1947, Benjamin B. Ferencz, a lawyer who had established a U.S. Army war crimes unit in Berlin the previous year, sat down with a small adding machine. One of his investigators had discovered a trove of secret reports while rummaging through an annex of the German Foreign Ministry near Tempelhof Airport. The typed pages, bound in loose-leaf folders, had been sent daily by the Gestapo to top Nazi officials. They provided full details of mass shootings of Jews, Gypsies, and other civilian “enemies” on the Eastern Front by *Einsatzgruppen*—SS extermination squads that followed the German army into the Soviet Union.

Ferencz had already gathered plenty of evidence about the horrors of the Third Reich. Still, as he tallied up the numbers of victims listed in the reports, he was stunned. “When I passed the figure of one million, I stopped adding,” he recalled. “That was quite enough for me.”

Ferencz rushed back to Nuremberg to tell his boss, General Telford Taylor—a Harvard Law school graduate, like Ferencz, with a distinguished career in public service. Taylor was in charge of the prosecution teams preparing a series of 12 trials that would follow the International Military Tribunal’s sentencing of top Nazi leaders. Ferencz insisted to Taylor that they add a trial for at least some of the *Einsatzgruppen* commanders who had presided over mass executions, but Taylor was cool to the idea. The general explained that the Pentagon was unlikely to appropriate more funds and personnel for trials beyond the ones already planned. Besides, the public did not seem eager for more trials.

None of this, however, discouraged Ferencz. He argued that if no one else would take on the case, he would do so, on top of his other duties. “Okay, you’ve got it,” Taylor told him.

As a result, Ferencz became the chief prosecutor in what the Associated Press called “the biggest murder trial in history.” He was 27 years old and it was his first trial. For Ferencz, who turns 97 this March, it was also the defining moment in his extraordinary life—one that influenced the decades that followed.

BORN INTO A HUNGARIAN JEWISH FAMILY in Transylvania, Romania, Ben Ferencz immigrated to the United States with his family when he was an infant. Ferencz was always a scrapper, not intimidated by any challenge. Living in the basement of one of the apartment buildings where his father worked as a janitor, he was initially rejected by the local public school because, at six, he spoke only

Yiddish and looked too small. (As an adult, he stood just over five feet tall.) But after attending schools in other parts of the city, Ferencz was singled out as one of the “gifted boys.” He became the first person in his family to go to college, and went on to Harvard Law School, tuition-free. While at Harvard, Ferencz served as a research assistant to Professor Sheldon Glueck, a noted criminologist working on a book about war crimes.

In 1943, Ferencz graduated from law school and joined the U.S. Army, where he was assigned to an anti-aircraft artillery unit taking part in the invasion of France. Getting off his landing craft at Omaha Beach, the private found himself in water that came up to his waist while for most of the others it came up to their knees. Said Ferencz of the army: “It took a while before it began to dawn upon them that perhaps I might be useful for something else.” By late 1944, he was promoted to corporal and transferred to the Judge Advocate Section of General George S. Patton’s Third Army. He was thrilled, particularly when he was told that he would be part of a new war crimes team.

As American troops fought their way into Germany, they heard numerous reports of Allied fliers who had parachuted into German territory only to be murdered by local residents. Ferencz’s first job was to investigate and carry out arrests as needed. “The only authority I had was the .45 caliber gun around my waist and the fact that the U.S. Army was swarming all over town,” he noted.

Despite his size and low rank, Ferencz brought to his assignments more than his share of New York-style chutzpah. He was on latrine duty at Patton’s headquarters on the outskirts of Munich when Marlene Dietrich showed up for a performance for the troops. Told to make sure she was not disturbed as she took a bath, he stood outside her door. “After waiting a reasonable time—to be sure that she was at least in the tub—and eager to do my duty, I simply walked into the room where she sat calmly immersed only in her splendor,” Ferencz recalled. He must have been rattled a bit by his own audacity, since, while retreating, he said: “Oh, pardon me, Sir.”

He apologized, but Dietrich was merely amused—laughing particularly at his use of “Sir.” After learning he was a lawyer, she invited Ferencz to join her for lunch with the brass, claiming he was an old friend. As a result, latrine duty segued into lunch with a superstar.

WITH THE DISCOVERY and liberation of the concentration camps, Ferencz’s priority became gathering evidence for the upcoming trials: records left in camp offices, including death registries, which

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In 1944 Ferencz (far left) joined a Third Army war crimes unit—here on leave in Belgium in 1945. With the discovery of the concentration camps, he focused on gathering evidence, which was stored in the records room at Nuremberg (below, left). After the war, Ferencz returned to Germany as part of a war crimes prosecution team under General Telford Taylor (below, right).



**Ferencz's biggest challenge was how to handle the huge body of evidence against the 3,000-some men who had methodically committed mass murder.**



A soldier from the Einsatzgruppe D mobile death squad takes aim at a Jew kneeling before a mass grave in Vinnitsa, Ukraine, in 1942.

routinely included bogus causes of death like “shot while trying to escape”; correspondence that provided information on how many prisoners had arrived in transports; even grisly souvenirs like two shrunken heads of prisoners that he found at Buchenwald. What he saw in camp after camp—bodies strewn everywhere, skeletal survivors—prompted near disbelief. “My mind would not accept what my eyes saw,” he later wrote. “I had peered into Hell.”

Ferencz felt a mounting fury that drove in him a burning desire to take swift action, or, when he witnessed the victims turning against their tormenters, no action at all. Arriving at the Ebensee concentration camp in Austria, he ordered a passing group of civilians to collect and bury the bodies. When some enraged inmates captured an SS officer, presumably the camp commandant, Ferencz saw them beat the man and tie him to one of the metal trays used for sliding bodies into the crematorium. They slid him back and forth over the flames until he was roasted alive. “I watched it happen and did nothing,” Ferencz recalled. “I was not inclined to try.”

After the war, Ferencz was eager to find a job back home and marry his longtime girlfriend, Gertrude. Yet despite his law degree, he felt unpre-

pared for a civilian career and acutely conscious that the country was flooded with millions of other returning veterans seeking new positions. One day, while walking down New York’s Fifth Avenue, he ran into a fellow Harvard Law School friend who was working for Supreme Court Justice Robert H. Jackson. Jackson was taking a leave of absence to serve as the Chief U.S. Prosecutor at the International Military Tribunal in Nuremberg. The chance encounter resulted in an offer for Ferencz to return to Germany to work for General Taylor, who was taking charge of the prosecution team handling the subsequent U.S. Army tribunals there.

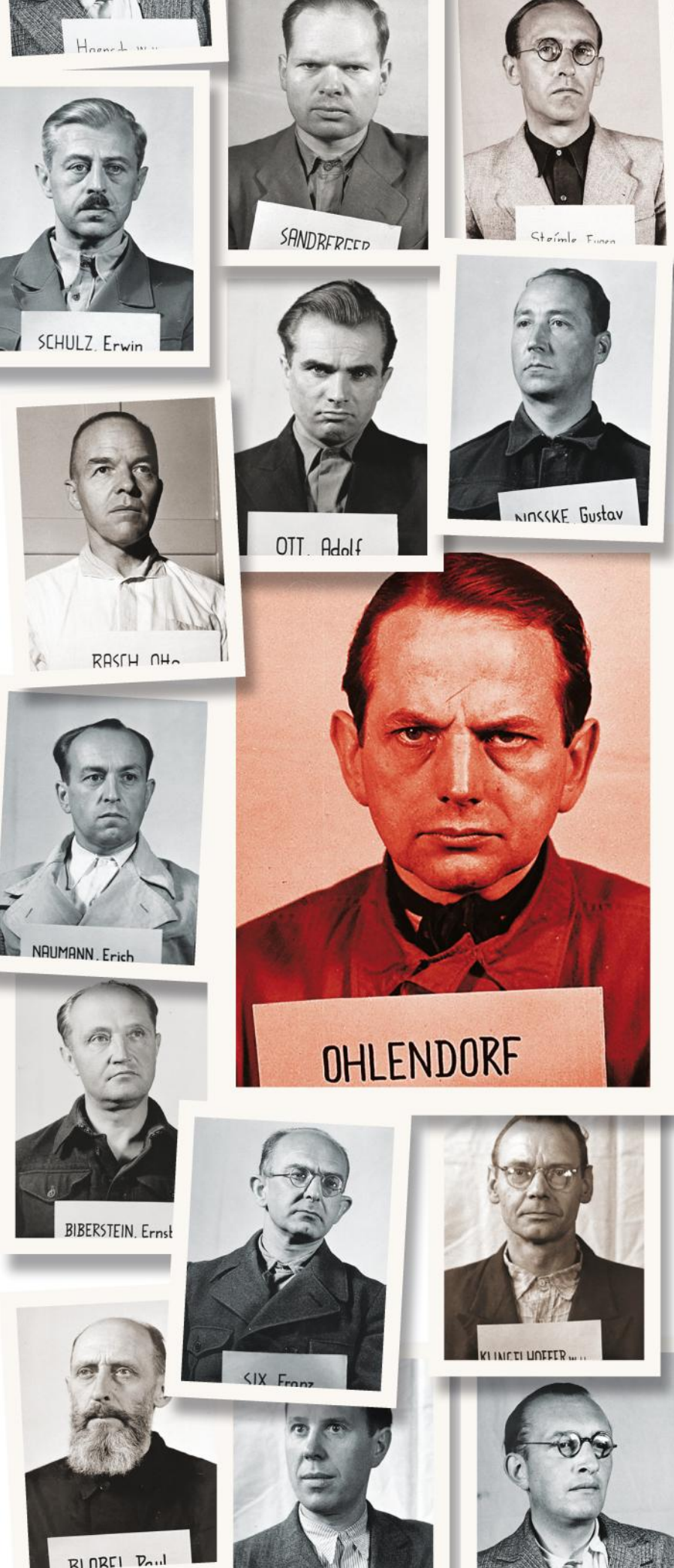
THAT WAS THE BEGINNING of Ferencz’s second German odyssey. Gertrude accompanied him to Berlin. After Taylor agreed to allow him to prosecute the Einsatzgruppen commanders, Ferencz and his wife moved to Nuremberg so he could prepare his case.

Ferencz’s biggest challenge was how to handle the huge body of evidence against the approximately 3,000 Einsatzgruppen members, who had methodically committed mass murder in the days before the death camps industrialized killing. He chose the most senior and best-educated SS officers to put on trial since it was impossible to prosecute all the members. For starters, the Nuremberg courtroom had only 24 seats in the defendants’ dock; noted Ferencz, “justice is always imperfect.” Of the original 24 he selected to prosecute, one committed suicide before the trial and another died shortly later due to poor health. That left 22.

The trial ran from September 29, 1947, to February 12, 1948, but Ferencz presented the prosecution’s case in a mere two days. Looking boyish as he stood behind a lectern that came midway up his chest, he called no witnesses, convinced that the documents provided more damning evidence than any testimony could.

In his opening statement, he charged the defendants with “the deliberate slaughter of more than a million innocent and defenseless men, women, and children...dictated, not by military necessity, but by that supreme perversion of thought, the Nazi theory of the master race.” Then he showed how this was possible. The four Einsatzgruppen operational groups, each composed of about 500 to 800 men, “averaged some 1,350 murders per day during a two-year-period; 1,350 human beings slaughtered on the average day, seven days a week for more than 100 weeks.”

Ferencz used a new term to describe the defendants’ crimes: genocide—originally coined by a Polish-Jewish refugee lawyer, Raphael Lemkin,



Limited to prosecuting only 24 Einsatzgruppen members, Ferencz chose the highest-ranked. He considered lawyer and economist Otto Ohlendorf (red) one of the best-educated mass murderers in history.

who, as early as 1933, had tried to warn the world of Hitler's threat to exterminate an entire race. Ferencz met Lemkin—"the somewhat lost and bedraggled fellow with the wild and pained look in his eyes," as he put it—during the Nuremberg trials, where Lemkin was lobbying to win recognition of genocide as a new category of international crime.

The presiding judge was the flamboyant Michael Musmanno, a judge in Pennsylvania before the war. Musmanno described Ferencz as "David taking Goliath's measure" as the diminutive prosecutor demolished the defendants' attempts to shift the blame for their killing sprees to anyone but themselves, or maintained that they had tried to be as "humane" as possible as they carried out their murderous tasks.

The defendants' testimony fascinated the judge, particularly that of Otto Ohlendorf, a father of five who had studied economics and boasted a doctorate in jurisprudence. Ohlendorf had commanded Einsatzgruppe D—probably the most notorious of the killing squads. Ferencz had included Ohlendorf precisely because he was one of the best-educated mass murderers in history.

Ohlendorf's testimony led to one of the trial's most revealing exchanges. Musmanno questioned Ohlendorf directly on his willingness to shoot defenseless civilians. "Now, didn't the question of the morality of that order enter your mind?" Musmanno asked. "Let us suppose that the order had been—and I don't mean any offense in this question—suppose the order had been that you kill your sister. Would you not have instinctively morally appraised that order as to whether it was right or wrong—morally, not politically or militarily—but as a matter of humanity, conscience, and justice?"

Ohlendorf looked shaken. As Musmanno recalled later, "He was aware that a man who would kill his own sister made of himself something less than human." But if Ohlendorf had said he would not have killed his sister, he would have admitted that he was capable of making a choice. All he could do was avoid answering the question.

Ohlendorf insisted that he had no right to question his orders and tried to portray the executions he conducted as self-defense. As Ferencz summed up this twisted logic later, Ohlendorf's argument was that "Germany was threatened by Communism, Jews were known to be bearers of Bolshevism, and Gypsies could not be trusted."



The trial's presiding judge called Ferencz (seated at left, top) "David taking Goliath's measure." The prosecutor secured 22 convictions—with Ohlendorf (above) and 13 others sentenced to death. Eventually hung in June 1951, Ohlendorf died, Ferencz says, "convinced he was right and I was wrong."

Such reasoning certainly did little to help Ohlendorf's case, or those of other defendants—all the more so because they were individuals who had the wherewithall to know better. General Taylor, who stepped in to make the closing statement for the prosecution, emphasized that the defendants were the leaders of "the trigger men in this gigantic program of slaughter," and that the record clearly demonstrated "the crimes of genocide and the other war crimes and crimes against humanity charged in the indictment."

When the judge emerged to pronounce his judgment, Ferencz was startled by what he heard. "Musmanno was much more severe than what I expected," the prosecutor recalled. "Each time he said 'death by hanging' it was like a hammer blow that shocked my brain." The judge issued 14 such verdicts, and sentenced the remaining eight defendants to prison terms ranging from 10 years to life.

Musmanno had never previously sentenced anyone to death. A devout Catholic, he had been troubled enough about the prospect of handing down such verdicts as to retreat to a nearby monastery for several days before the trial's end. Ferencz had not explicitly asked for death sentences; as he explained later, he was not against the death penalty but "could never figure out a sentence that would fit the crime." How, he asked, could you balance "the lives of a million people butchered in cold blood with the lives of 22 defendants, even if you chopped them in pieces?"

WITH THE COLD WAR STARTING just as the last of the Nuremberg trials drew to a close, Washington quickly lost interest in holding further trials. There were other priorities: in the political and ideological struggle against the Soviet Union, American officials wanted to line up popular support in West Germany, where most people were eager to put the horrors of the Third Reich behind them. A clemency board recommended drastically reducing many of the sentences.

Looking back, Ferencz offered the final figures: "I had 3,000 Einsatzgruppen members who every day went out and shot as many Jews as they could and Gypsies as well. I tried 22, I convicted 22, 14 were sentenced to death, four of them were actually executed, the rest of them got out after a few years." By 1958, the last of the surviving defendants were free men. Ferencz added somberly: "The other 3,000—nothing ever happened to them. Every day they had committed mass murder."

While Ferencz was proud of his record, he was also frustrated by some of his experiences in Nuremberg—particularly the attitudes of the accused and their accomplices. He avoided talking to any of the defendants outside the courtroom, except in a single case—that of Ohlendorf. Ferencz exchanged a few words with him after he was sentenced to death. "The Jews in America will suffer for this," said the condemned man, who would be among the four who were hung. Ferencz added: "He died convinced that he was right and I was wrong."

Few Germans expressed themselves quite so bluntly to the victors, but contrition was extremely rare. "I never had a German come up to me and say 'I'm sorry' all the time I was in Germany," Ferencz pointed out. "That was my biggest disappointment: nobody, including my mass murderers, ever said I'm sorry. That was the mentality."

"Where is justice?" he continued. "It was only symbolic, it's only a beginning, that's all you can do." But over time, Ferencz became increasingly convinced that the trials, no matter how symbolic



Ferencz in November 2016: at nearly 97, the prosecutor remains passionate about his causes.

in terms of punishing only a fraction of those responsible for the Third Reich's crimes, contributed to "a gradual awakening of the human conscience."

WHEN I FIRST MET FERENCZ in Delray Beach, Florida, in early 2013, he looked like a typical retiree. His home there is a sparsely furnished one-bedroom bungalow he purchased 40 years ago for less than \$23,000. He wore a sailor cap, a short-sleeve blue shirt, and navy pants held up by black suspenders. But he made it immediately clear that he did not feel like a retiree—in fact, he remains as passionate about his causes as ever. To prove that point, he told me he had just returned from his regular workout at the gym and rolled up his sleeve to flex his bicep.

Ferencz quickly pivoted from the Einsatzgruppen cases to pursuing justice in other forms. With support from American authorities in Germany, he launched the Jewish Restitution Successor Organization to seek material assistance and restitution of property for the survivors. Next, he helped set up the United Restitution Organization with offices in 19 countries, and participated in complex negotiations with West German Chancellor Konrad Adenauer's government, other countries, and numerous victims—not only Jews. Ferencz stayed with his family in Germany until 1956 to continue this work; all

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four of his children were born in Nuremberg.

While Ferencz stressed that it took a long time for many Germans to acknowledge their victims, he was impressed by the willingness of the new German authorities to begin what would be an unprecedented effort to compensate them. "It never happened in history that a country paid its victims individually—inspired by Adenauer who said terrible crimes were committed in the name of the German people," he said.

But the cause that has continued to consume him into his tenth decade is a direct product of his role as a Nuremberg prosecutor. At every opportunity he has argued that conflicts must be resolved through "law not war," and his pleas have been picked up by others. In 1997, Professor Antonio Cassese, the head of the United Nations special tribunal for crimes in Rwanda and Yugoslavia, quoted Ferencz's eloquent conclusion to his presentation in the Nuremberg trial: "If these men be immune, then law has lost its meaning, and man must live in fear." For Ferencz, it was a poignant moment. "I must admit that I was deeply touched that the words I had uttered as a young man of 27 had not been completely lost in the wind," he later wrote.

An avid supporter of the International Criminal Court, Ferencz delivered the closing argument in the court's first trial in The Hague on August 25, 2011; he was 91 at the time. The defendant, Thomas Lubanga Dyilo, a Congolese rebel leader accused of recruiting child soldiers, was in the dock as Ferencz invoked the lessons of Nuremberg. In July 2012, Dyilo was found guilty and sentenced to 14 years in prison.

Last August, Ferencz donated one million dollars to the Center for the Prevention of Genocide at United States Holocaust Memorial Museum. This gift, made possible by a lifetime of frugal living, is renewable annually for up to 10 years. "I have witnessed holocausts and I cannot stop trying to deter future genocides," he declared. The new project is the Ben Ferencz International Justice Initiative.

When I emailed Ferencz to congratulate him on his generosity, he quickly responded: "I continue my efforts to deter illegal killings everywhere.... 'Never give up' is my plea."

Benjamin Ferencz never does. ★