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Judge Norbert Ehrenfreund and Ghosts of Nuremberg

March 09, 2012

1 hour, 02 minutes, 50 seconds

Speakers: Professor Patrick Hyder Patterson and Judge Norbert Ehrenfreund

Transcribed by: Rachel E Lieu

[Holocaust Living History Workshop](#)

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Judge Norbert Ehrenfreund and Ghosts of Nuremberg (2012)
Holocaust Living History Workshop

- Time Transcription
- 00:00 [The Library UC San Diego]
- 00:04 [Judge Norbert Ehrenfreund and Ghosts of Nuremberg]
- 00:08 Susanne Hillman: I would like to welcome everybody to this special event uh, Judge Norbert Ehrenfreund and the Ghosts of Nuremberg. I am very, very pleased to have this special guest tonight and I can say that it has taken me years to finally meet uh, Judge Ehrenfreund. You probably don't know this, but years ago when my husband started working at UCSD [University of California, San Diego], he started having a new boss, and this new boss happened to be the son of Judge Boyle, who you know. And so, David Boyle, his son, told me you gotta meet Judge Ehrenfreund. He's a great speaker and he has experienced history firsthand. He really has interesting unique insights into the recent past. So it took about five or seven years, at least, until I managed to um to establish a connection and to invite uh, Judge Ehrenfreund. I thank you very much for coming and I will now um, let Professor, history professor, Patrick Patterson say a few words about uh Judge Ehrenfreund and his background. Please help me welcome Judge Norbert Ehrenfreund.
- 01:20 Professor Patrick Hyder Patterson: Thank you Susanne, and thanks to all of you for coming, and thanks especially to Judge Ehrenfreund; it's a real pleasure and a real honor and a privilege to have him with us today. Um, when I was asked to introduce the Judge uh, the request, can you give about five to ten minutes of historical context for what he's doing, and that's a very tall order. Um so, I would just say get the book, okay, because the book uh, does a fantastic job, as, as good a job as, as I've seen of, of encapsulating, the um, encapsulating the legacy of Nuremberg. And that's the, the, the title and the driving theme of the book. And um, it's something that I spent uh, five weeks on and um, and still feel I'm leaving an awful lot out, and Judge Ehrenfreund's book does it splendidly, and puts, and really puts the, the issues of the legacy - why this stuff matters - in play. And I can tell you from my own experience, which is, is not nearly as rich as his, I come at this as a, as a scholar and a teacher. I'm a historian of Eastern Europe and the Balkans, and in particular what used to be Yugoslavia - a place that produced its own awful legacy of war crimes and genocide that we'll be dealing with for a long time. And so, that was my attraction, if you will, to a not very attractive subject. And here at UCSD, I teach a course called International Law - War Crimes and Genocide, and I'm a historian and a former lawyer. And I teach a kind of a third history, a third politics, and a third law. And that question of the legacy, why this all matters - how it continues to matter - is something that I see every time I teach it, and I end up teaching it frequently because there's a huge demand. I actually see one of my former TAs [teaching assistants], a history grad student uh, in, in the room here, and uh, he knows it. He's seen it as well. We've been, we've been pleasantly surprised by it. This generation of 18 to 20-something-year-olds actually has a tremendous hunger to understand this, even though they didn't uh, they didn't live through it.
- 03:50 Professor Patrick Hyder Patterson: I had a student say, I can't believe that all this was going on in Yugoslavia when I was alive - when she was four at the time. You

kind of have to cut yourself some slack here. Um so, for for those of us of a certain age uh, we either saw it or we have a more immediate experience of those who live through it. Uh, my 91-year-old dad uh, was in World War II but, but at a safe distance, in a records office in Maryland. So he never got close to these kind of events the way that Judge Ehrenfreund did. Um, it is, I said, it's a, it's a privilege. It's a rare opportunity. This, this is a, the living history is disappearing, yeah. People are, they're, they're just getting old and there's no way around that. Well, there's actually one interesting way around that. We're trying to be part of that, here at UC San Diego. Um, the uh, the video testimonies that we have here at the Library - we're one of the few places in America that has this kind of access - work to archive and preserve for the use of future people who think it matters, whether they're scholars, or students, or members of the public. There's a, it's a little bit of a counterweight to the fact that the history is disappearing from us. So today you've got a rare opportunity to hear from someone who lived it, participated in it, helped communicate it to an audience to whom it would have been would have been unfamiliar at the time, and has thought long and hard about why it all matters.

05:30 Professor Patrick Hyder Patterson: I think most of the talk today is going to focus about, on the Nuremberg experience. But I want to tell you that, in the book, Judge Ehrenfreund is spending a good, good bit of time explaining quite carefully, quite clearly how, after the Nuremberg Trials have wrapped up, and he also does a great job of moving the focus away from just the trial of the main defendants, the one that gets all the attention. There were many other trials and he gives you a, a flavor, of those and a sense of what was at stake there, and how those trials have mattered as well. How the trials of the doctors have influenced concerns about medical ethics today. How the trials of businessmen and financiers have come back to haunt American businesses that allegedly uh, are involved in their labor practices and perpetuating human rights abuses around the world today. This is a living legacy and it comes across uh, in the book. So we're lucky to hear from somebody who's lived it and has thought about what it all means. Uh, Judge Ehrenfreund is retired from the bench now. He was a judge of the San Diego Superior Court for over 30 years. He began his legal career in 1960 as a Deputy District Attorney in the San Diego's DA's [District Attorney's] office. After eight years there, moved on to found a new law firm, on the other side, Defenders Incorporated which is dedicated to representing the poor in criminal cases, and then served as the chief trial attorney for that firm for eight years. In 1975 he was appointed to the Superior Court Bench by then-Governor Jerry Brown. And if he's not careful uh, maybe Governor Brown is going to come back for him because he's still quite active.

07:27 Professor Patrick Hyder Patterson: Law was Judge's, Judge Ehrenfreund's second career. After World War II he had worked as a newspaper correspondent in Europe, for the well-known uh, classic American newspaper, *The Stars and Stripes*, the Army newspaper. And it was that, in that capacitated, capacity, that he covered portions of the Nuremberg War Crimes Trials, and again, went deep into them - got to see more than what just gets top billing. It was that experience that inspired his interest in the law and led him ultimately to a legal career. He was a veteran of World War II, an artillery officer in General [George] Patton's Third Army, was involved in combat in France, Germany, and Austria, decorated with the bronze star for meritorious action in the Battle of the Rhine River, graduated

from the University of Missouri School of Journalism. Uh, though that involves some travel. He has traveled quite a bit, and that involved some travel because, he told me before, we were talking, that he grew up in Peekskill, New York. So uh, he, some early, early travel there too. Earned a Master's degree in political science from Columbia [University] and a law degree from Stanford [University]. At the annual conference of the American Bar Association in 2001, he was presented with the Award of Judicial Excellence, an award that's given annually to one judge in the United States. He is the author of three books. *You're the Jury* - the co-author of that - *You Be the Judge: 20 True Crimes and Cases to Solve*, and the book that we're going to be talking about today, *The Nuremberg Legacy: How the Nazi War Crimes [Trials] Changed the Course of History*.

09:08 Professor Patrick Hyder Patterson: The um, they did change the course of history. They, they stand as this moment that marks, as I tell my students, that marks the history of what comes after. And as uh, another very perceptive writer on these subjects, Gary Jonathan Bass, argues this is the time for when people if, if you're interested in, in legalism - that is to say using the law to get at these problematic cases, to punish those involved in these kind of crimes, and one hopes to deter people in the future from doing it. If you're a legalist, someone who seeks those tools, well then Nuremberg was the shining moment as, as Bass calls it. He says, Nuremberg remains legalism's greatest moment of glory. But it's not without its problems, not without his problems. We've seen that too, uh and, and the book will talk about it, and I think Judge Ehrenfreund will talk about it too. Um the biggest problem, I think, is hungover Nuremberg is the, the shadow of victor's justice. Were corners cut? Was there unfairness in the way the trials actually unfolded? And um, that's that's an inescapable problem. And, and Judge Ehrenfreund does a great job of, of confronting that directly. And Bass says we've got to realize that what made Nuremberg suspect - by that he means the victor's justice problem - what made it suspect made it strong. The victors were there powerfully. And the case that I have to deal with - Yugoslavia - was, was, was dealt with through a very different means, and also inspired by the example of Nuremberg. The International War Crimes Tribunal for Yugoslavia, so-called that took place at the Hague, the Hague Tribunals uh, bent over backwards to, to make, to avoid the appearance of victor's justice. They still got accused of it but they, they went to great lengths to avoid that. And as a result of that, the Trials have gone to great lengths, creating another problem, is it the trials never wrapped up. And so, what as Bass again says, what made the Hague unimpeachable, made the Hague weak. So even there you can see how everything that, all the, the war crimes tribunals, the cases that come after, sort of pivot off of, can't help reflecting Nuremberg. That's the legacy that Judge Ehrenfreund is going to talk about today, and I'm sure you will find it uh, very stimulating, and provocative, and interesting. Looking forward to it. Judge Ehrenfreund.

11:58 Judge Ehrenfreund: Thank you, thank you very much. When I was a teenager in high school, back in 1938, I come home from school one afternoon to find my mother in tears. She was sitting on the sofa. I went over to her and I said, Mama what's wrong? Why are you crying? She couldn't answer. She handed me these papers she had in her hands. I took these papers; they were envelopes, sealed envelopes. I looked at them. They were envelopes, letters that she had sent to her father in Czechoslovakia, where she had grown up and lived all her young life

before she married, and came to America. I looked at these envelopes. There was letters that she sent to her father there, as she always did, but they had come back, and each one was stamped with these two words: address unknown. I said, Mother what, what's going on? She said I don't know. I've written these letters and they always come back this way. I don't know where my father is, and she was crying. Well, you see, she had lived in that house uh, for all, or most of her life before she married and came to America. And now she couldn't, she knew her father would have told her if, would've told her if he was moving anywhere. Well, we looked everywhere. Um, we went to the Red Cross; we went to Washington trying to find out, but they couldn't tell us anything. I realized years later that Jewish immigrants from all over America were receiving the same letters back: address unknown.

13:50 Judge Ehrenfreund: I realized years later that, that was, that was the beginning really, the investigation, the the inquiries, the questions about, we were all receiving these letters back, address unknown, why? I understood later that that was the beginning of the investigation into the Holocaust, the investigation in what was happening in Europe that led, led to the Nuremberg Trials. When I was in, working in, in Europe years later as a correspondent, my mother asked me to try and find out what was exactly happened to her father. I pretty much had a good idea what had happened to him all right, and I was reluctant to find out actually, but I did find out. He had been gassed by the, by the Nazis at a concentration camp in Treblinka, Poland. I didn't want to tell her how he died, but I just did tell her that he died in a concentration camp in Poland. Now the war ended, World War II ended in, on May 8, 1945. At that time I was a forward observer for an artillery battery of 105-millimeter howitzers. We had fought through France, and Germany, and Austria, and under General [George] Patton's 3rd Army, and on the way, when coming into Austria, we had overran a concentration camp named Gunskirchen, near the city of Lambach in Austria. I had heard about concentration camps; the stories coming back from other soldiers had told me about them, but I was skeptical. But now I was seeing a concentration camp for the first time. For the first time, I was, in a sense, witness to the Holocaust. There were these dead bodies lying, lying along the ground. There weren't any gas chambers there at this concentration camp, but they found another way to, to kill the inhabitants; they starve them to death.

16:09 Judge Ehrenfreund: Before we arrived, my outfit arrived - the 71st division, 5th in- I was attached to the fifth infantry regiment as a forward observer - before we arrived, all the guards had left. They had left and deserted the camp, and left the victims, the inmates, there. And we came on, we saw these dead bodies lying on, people who had starved to death. Some of them were still alive; some were still able to walk; some not. And our medical unit came and took care of them as best we could, took them to hospitals and other places to care for them. That was my first experience with a concentration camp and I've never forgotten it. We went on to, as we were going through Austria, we went on to uh Steyr, a city in Austria. We thought we were going on to, to Vienna and we knew the war was ending, that the Germans were surrendering, but coming at us with their hands raised - hundreds of thousands sometimes of German troops coming up towards us. They were coming away from the Russians. They didn't want to be captured by the Russian; said they want to be captured by us. They thought that we treat them better, and

they were coming at us with their hands raised. Sometimes I'd see hundreds or so coming in, when I was in my jeep with my platoon, coming at us like that. Some of them ask us, we want to help you fight the Russians. We want to help you when you fight the Russians. We told them they were crazy if we thought we were going to do that and we sent them back to our internment camps.

17:45 Judge Ehrenfreund: We got to the town of Steyr, on the Enns River. We waited for the Russians. We received an order from from Eisenhower. We thought we were going to Vienna. We received an order from Eisenhower, stop where you are; stop wherever you are. The Russians are going to take Vienna, you stop and wait for them. And so, reluctantly we stopped and waited for the Russians, and soon they came, and we celebrated. We hugged each other, the American troops and Russian troops. We hugged each other on the banks of the Enns River, and we had a big party, and they laid out tables for us - the first time we ate on real dishes - and we, and we had a big celebration. There was lots of camaraderie. And, you know, I lived in Europe, and worked in Europe for seven or eight years after that - that was the only time I ever had a moment of camaraderie, of real friendship and celebration with the Russians. Even when I was a correspondent at the Nuremberg Trial, and there were Russian correspondents there, I wanted to meet them; I wanted to talk with them. We couldn't. There was a wall between us. There was a wall between us and the, and the Russians even then, even between the correspondents. And I never had another, another time like that when we met the Russians at the end of the war. Never had another time like that. And of course, when we met the Russians that day in Austria, we knew, we knew the war was over because we had closed ranks - we coming on the on the western front and the Russians on the eastern front - we had closed the ranks. There were no longer any Germans, soldiers between us and the war, the war was over.

19:31 Judge Ehrenfreund: Now when the war ended ladies and gentlemen, there, there were many problems of course arose, many problems. But one was the one we're talking about here today. One problem was, what to do with the captured Nazi leaders. What to do with the men who started that terrible war? What to do with the men who are responsible for the murder of six million Jews, and millions of others that Hitler found in disfavor? What to do with them? Should be shot, hanged, should they be released as prisoners of war, or are released at the end of a war, what? Well in February, I remember February of 1945, just a few months before the end of the war the three most powerful men in the world met. They met in Yalta, in Ukraine. They met to discuss that problem, among others, of what to do with the captured Nazi leaders. [Franklin] Roosevelt was there, President Roosevelt, [Winston] Churchill was there, and [Joseph] Stalin was there. They were meeting to discuss that problem. Winston Churchill said, they should be shot. They don't deserve a trial. They've lost their right to a trial. He was burning with the resentment of the British people, and he said they don't deserve a trial. They should be shot by a firing squad. You give them a trial it would only give them a chance to spout their Nazi propaganda. No, no trial for them. Stalin, the dictator of the Soviet Union said, no, we, there should be a trial. It should be an international trial. He wanted to try out an international one, but he didn't mean a genuine trial. He didn't mean that at all. He meant a sham. He meant a show trial. Roosevelt, President Roosevelt, who was a sick and really dying man at the time, and

nobody, we didn't know that - how sick he was in February of 1943. He was on the fence.

21:43 Judge Ehrenfreund: Back in Washington [DC], he had been pressured by, by two sides of his cabinet. On one side he had his close friend, Henry Morgenthau Jr. who's Secretary of the Treasury, and Morgenthau was advising him to follow Churchill. Follow Churchill, he knows that scene. He suffered; he knows what the Nazis did. Follow Churchill. He's your friend. He wants it, he wants them shot by a firing squad. That's what you, that's what we should do. And the other side of the cabinet was Henry Stimson, Secretary of War. He said, no. No, don't do that. He told Roosevelt if you do that you'll be laying the seeds of a Third World War. That's Hitler's justice to do that. No, we need, we want a trial. We want a fair trial. That meeting occurred in February of 1945, just a few months before the end of the war. Now in June, going through these dates, in June of 1945 - remember, that's just about a month after the end of the war - in June of 1945 the representatives of four major powers met in London to discuss this problem. The four countries represented were Soviet Union, Great Britain, France, and United States. They were meeting there to discuss, sort of like a pre-trial conference, for what might be the trial, what became the Nuremberg Trial. But what was the law? What was the court? Who were the judges? Where was the courthouse? There was no law. There was no court. There was no jurisdiction. They had to write the laws that fit the crimes, then they had to draft the penalties that went with those crimes.

23:36 Judge Ehrenfreund: You see, that was a time when the stories of the, what we called, later called the Holocaust, that was a time when the stories were just coming out, just a month after the end of the war when the survivors of the Holocaust were being released, and they were telling their stories for the first time and the soldiers, like myself, who had seen the concentration camp, we were telling our stories. And these stories were going back, not only Europe, but going back to the States, and all the press in the world, the Americans especially, were enraged. They were enraged by two things, enraged by the fact of these stories of what, what the Nazis had done, but they were enraged also by the fact that these diplomats in London were talking about a trial. What's this nonsense he said about a trial? You're going to give these terrible people, these bastards a trial? They are the worst criminals in history. They don't deserve a trial. Churchill is absolutely right. They don't deserve a trial. They should be taken out and shot, nonsense talking about a trial. And then that London conference, one man stood up. One man stood up amid all the furor, amid all the cries for revenge, one man stood up and called for justice. A fair trial, he said, a fair trial; justice must prevail here. The world will judge us what we do, judge us tomorrow what we do here today. It must be a fair trial. We stand for justice.

25:22 Judge Ehrenfreund: Some of those, some of those Allied representatives at that London conference, they looked at [Robert H.] Jackson because he was off a little bit as if he was crazy a little bit. You mean, they said to him, you mean a fair trial? You mean a fair trial for Hermann Göring? You know what Hermann Göring did, they told him. He was number two man to Adolf Hitler. It was his idea, the concentration camps were his idea. The Gestapo was his idea. He signed the decree. You know what the decree said, eliminate all the Jews in Europe that was Göring's decree that he signed. And you're going to give a man like that the same

kind of trial that you given in your country to a, to a burglar or a drunken driver? You want to get him the same kind of trial, with what you call justice? Jackson, Jackson was stubborn. Yes, he said, that's right. I believe in that. Yeah, a fair trial for Hermann Göring. And they said to him, you mean a fair trial for Ernst Kaltenbrunner? You know what Kaltenbrunner did? What his job was? It was very simple uh, you can say in a few words what his task was. His job, kill all the Jews in Europe. That was Kaltenbrunner's job and he almost did it. He almost did it, as you know. He was very good at his job. You're going to give a man like that fair trial? No. And Jackson said, absolutely yes, and we're going to do that. We must do that. We must give them a fair trial. You want to give somebody like uh, Alfred Rosenberg, who was the theorist of antisemitism, who encouraged the antisemitism, and wrote books on it and so forth, you're going to give them a fair trial? Yes. Jackson went down the line and said every, every man deserves a fair trial. They wanted to know what he meant by a fair trial and he told them. I mean that every defendant should have an attorney, attorney who could represent him. It means a right to, every attorney has a right to be present at all the proceedings, the right to be heard, a right to confront all the witnesses against him. That's what I mean by a fair trial.

27:49 Judge Ehrenfreund: And you also mean he said, the presumption of innocence? Presumption of innocence? They wanted to know what he meant. [Iona] Nikitchenko, who's the Russian delegate, General Nikitchenko later became a judge at the, at the main Nuremberg Trial. Nikitchenko said, what does this mean presume, a presumption of innocence? What are you talking about? And Jackson had to explain. They actually said well it's a legal term. It's a fiction, presumed. Nikitchenko says, we, who, you didn't, you didn't suffer like we suffered. He said, you in America, you haven't suffered like we suffered. You don't know. You don't know what it means to have so many millions of your people killed in the, in this conflict with Hitler. You're gonna, you want us to presume that? That means to act as if, or to pretend that they're innocent? Jackson said yes. The presumption of innocence means that every judge must be able to look a defendant in the eye and say, I presume that you are innocent and I will hold to that presumption unless and until you're proven guilty beyond a reasonable doubt. That's what it means and we believe in that standard. Nikitchenko, he just couldn't understand it. He said we can't presume that they're innocent. We know they're guilty. How can we presume that they're innocent? How can we act as if they're innocent? They're, they're guilty. They're already guilty. What are you talking about? Nikitchenko said, he said, you know how many people we have lost? How many Soviet citizens altogether we have lost in this war that Hitler started? We've lost 27 million Soviet citizens and you want us to presume, presume that they're innocent?

29:56 Judge Ehrenfreund: Jackson said, yes, yes, we must do that; that's their right. We believe that that's their right, in order to have, to have a fair trial. Nikitchenko said, look, he said, you, you remember the February meeting between your president Roosevelt and Stalin and Churchill, and you remember at that meeting those three leaders said that the Nazis were guilty of war crimes, and they had to be punished for those crimes. Didn't your president say they were guilty? Yes, Jackson said, that's true. Well then, they're already, they've already been found guilty, Nikitchenko said. We don't need a trial to prove that. They were even found guilty by your own President, by our own leader Stalin, and by Churchill. Why are we

going to have a trial? And Jackson said it's not our system. The President of the United States has a lot of power, a lot of power, but he doesn't have the power to find anyone guilty. That has to be done by a court of law. He doesn't have that kind of power. And that argument went on for, for weeks between Nikitchenko and, and Jackson. And finally, Jackson got so frustrated, got so he realized that this is a great grave difference, a grave philosophical difference between the United States and the Soviet Union; this, this idea because this idea of innocent and true until proven guilty. That's basic to our system, Jackson said. We can't have it any other way if you're going to have a trial. I came over here with high hopes for a trial that people would respect. You don't put a man on trial, Jackson said unless you're willing to set him free if he's not found guilty. And the world yields no respect, he said, for courts that are organized to convict. I came over here hoping to establish a trial that the world would respect for centuries that would be a beacon of justice for centuries to come, generations to come.

32:30 Judge Ehrenfreund: Jackson said, I'm afraid, I'm afraid I can't do that. My hopes were too high. He closed his books; he put them in his briefcase and he started to walk out. He said, gentlemen, I'm sorry, our differences are too great. I'm, I'm going to leave you now. Each of us, each of us countries will try our own prisoners, our own captured Nazi leaders, that we have in our custody. We'll each try our own, and we'll do it that way. He packed up and he started to walk out the door of that London conference, and there are other, some of the other [unclear] cried and said, no, don't leave, don't leave. He went to the door, and he's about to leave and Nikitchenko stood up and said, wait, Jackson said, what is it? And Jack- and Nikitchenko went over to him. He said, I, I'd like to talk to you. Please come back to the table. I need to talk some more. No, Jackson said, we were too far apart. What is there to talk about? Nikitchenko said, look uh, I'm under orders to have a, have an international trial - all four of us together. He said Stalin has ordered me to conduct an international trial. Jackson said, you mean a show trial? You mean a sham? No, no, we can compromise, Nikitchenko said. If you want to proceed with the idea of presumption of innocence, we we will not object; we will go along with your version of justice. And so they reached an agreement in London. They called it the London Charter.

34:30 Judge Ehrenfreund: Ladies and gentlemen, at that time I was still in, I was still in Germany, of course, with the occupation troops. I heard about what had happened in London, that they'd had this agreement to have a fair trial, and I was very proud of my country, very proud of what my country stood for. Because it meant for the first time, I realized that America was, it was America was stepping forward to take over the moral leadership of the world. That's what was happening. And I felt very proud of that, and I wanted to, I wanted to thank those people, thank the Americans who had that confidence of what they had done. It was such a, we have never given that moment - that moment in London when they reached this agreement for a reasonably fair trial at Nuremberg - we've never again given that moment the real significance that it's entitled. It was a momentous decision, momentous. It ranks, you know, it ranks with that other time in history way back, centuries before, when human beings for the first time instead of, instead of punishing people just by the hue and cry of the public, for the first time that reason and judgment govern punishment. That's the kind of moment it was.

- 36:11 Judge Ehrenfreund: I remember, I remember the first time I went to the Palace of Justice in Nuremberg, that was the courthouse where the Nuremberg Trial was being held. I had been, taken a job when the, when I got out of the Army. I'd taken a job as a newspaper reporter with the *Stars and Stripes*. I was a, I was a young guy. I mean, I, I, I had no right to be the main reporter at that trial, a trial of such significance. I was, what was I, like 23, 24 years old? And I wasn't going to be the main reporter for that, for that trial. I would just there to help out those first, that first few months. Later on, I did become the main reporter at the other Nuremberg Trials, but at that first time, with a big trial was going, on I was not the main reporter. I was like a cub reporter, the kid reporter. I remember though, I remember like it was yesterday, going through those Nuremberg streets on the way to the courthouse. You know, there were at that time, it was just a few months after the end of the war. At that time there were still 20,000 bodies lying under the debris in Nuremberg from an air raid, from the British air raid that occurred just near the last days of the war. And when you walk through Nuremberg in those days, this is a strange setting for a trial, when you walk through Nuremberg you can see the German people digging into the, digging into that rooms and the debris looking for, looking for their furnishings, looking for their belongings, and looking for their, their loved ones. That's the kind of setting it was just outside of that courthouse.
- 38:05 Judge Ehrenfreund: I came to the front door at the courthouse, I remember, and I stopped. I said to myself, can I do this? Can I, can I really be objective as a newspaper reporter is supposed to be? You see, I'd gone to this school of journalism at the University of Missouri before I went into the Army, and I'd been taught there to be objective. Newspaperman has to be objective. You can't insert your own opinions; no, you can't editorialize. You just be objective when you write a story. Just the facts, please. I taught that and I believe that. When I came to that front door, about to enter the courthouse, I said to myself, can I be objective? I've seen these concentrations, I've seen a concentration camp. I heard the stories of others. I've talked to Holocaust survivors who've just been released. My own grandfather was murdered by the Nazis at Treblinka Poland, in a concentration camp. I was a Jew myself. I'd seen how the Jews had suffered under the, under Hitler. I said to myself, you know, maybe I should go back and tell my editor this is not the case for, a story for me. I can't be, I can't really be objective. I'm too involved in what's happened. It's too close. I'm saddened, these, these crimes, what I've seen. But you know what? I have to confess; I was selfish. I knew I was on a pretty big story. I didn't want to miss out on it and I went in. I just told myself, you got to try to be objective. But I didn't go back. I went ahead and sat down at the press gallery, and I was the youngest guy, I remember, in that press gallery because there are a lot of big-time reporters there, guys like Walter Cronkite, Howard Smith, and Edward R. Murrow. They were all there, Shirer - William Shirer - the big reporters at the time, and I was just a kid beside them.
- 40:34 Judge Ehrenfreund: I looked at them. I looked around. On the left side, as you come into that courtroom, it's like a long jury box. You've probably seen the pictures of the defendants. There were 21 defendants sitting in that long jury box, 21. Opposite, on the other side of the room, were the judges. There were eight judges sitting there, but only four were voting judges. The other four were alternates. And in front, the witness stand. All around the room lawyers, interpreters um, clerks of any kind, all sorts of people. The room was crowded. I

looked over to the left, the man sitting just 20 or 30 feet away from me at the end of the dock was Hermann Göring. He had on his uniform but all the medals and brass were gone, next to him Rudolph Hess, next to him [Joachim von] Ribbentrop - all down the line. I looked at them. I said, how, how could they have done this? I said, I thought to myself, you were in a country - Germany - which one of the highest cultured company, countries in the world. You're in the land of Beethoven, and Bach, and Brahms. You're in the land of Mozart. Out of this culture, this all came, out of this German Austrian culture came, came people like Albert Einstein and Sigmund Freud. They were in that culture. How could the people in this, in this country have chosen leaders who are so barbaric? How could that have happened? You know what, I still wonder that.

42:36 Judge Ehrenfreund: The trial began on a high note with Robert Jackson's, Robert Jackson's opening statement. Robert Jackson, I neglected to say when I was discussing the London Charter, was the American delegate to that conference. Harry Truman had appointed him to be the chief prosecutor at the Nuremberg Trial, and also the representative at the London Conference, which I pointed out was so important. Jackson was a strange person to be on the Supreme Court. He was on the United States Supreme Court Justice. He was a very strange person to be in there. Imagine this, a Supreme Court Justice never going to college, never got a law degree, never. He didn't have a college degree. He didn't have a law degree but it was so. He had a sharp, he had such a grasp of the English language, and such a brilliant mind, that Roosevelt noticed him. Roosevelt noticed him before he died, before Roosevelt died, and selected him to go on the, selected him first as a Solicitor, and then as Attorney General, and then as a justice of the United States Supreme Court. And Jackson began that trial on a very high note with one of the greatest opening statements, the press hailed it, ever made in a court of law.

44:23 Judge Ehrenfreund: I still remember the first words of that speech, to give you an idea of the kind of eloquence that Jackson said, I hope I can remember it. It went like this: May it please your Honors: the privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, so devastating, that civilization cannot tolerate their being ignored, because it cannot survive they're being repeated. That four great nations, flushed with victory and stung with injury voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason. That's the way Jackson talked. The trial went on from there. Now there was no, the defense had no arguments. They could have no dispute with regard to their facts. The evidence was too strong. They could not argue that six million Jews were murdered. There was no argument about that. The trial went on, and the trial, actually at the beginning, became rather dull because Jackson was a documentary man. He wanted to prove everything with documents.

46:10 Judge Ehrenfreund: Now, there were four charges, to go over the trial very briefly, there were four main charges at the Nuremberg Trial, one the conspiracy to wage aggressive war, two the actual waging of aggressive war, three war crimes - those are the traditional war crimes such as, such as uh, misuse or abusing civilians, and misuse of, of treating prisoners of war and so forth - but the fourth count, which we

today think of as the main count when people think of Nuremberg Trials, called crimes against humanity. Later on, not then much later on, years later, we gave it a name, crimes against humanity. We called it the Holocaust. That was the fourth count, in all, in most of our minds, the most important count. Now, what were their defenses? How could they possibly defend? How could these defendants? What do they have to say against these charges? Well, they charged the, of course, they had, the only factual defenses they had was well we didn't do it, or we did, we weren't there, we were, never saw a concentration camp, we didn't know this was going on. Those were the kind of defenses they had factually, but the more important defenses were those of a legal nature. Professor Patterson's already mentioned one, victor's justice. See, all the judges, as I said there were four to vote, judges who were to vote - the other four were alternates - all the judges came from Allied countries that had suffered under Hitler's infamy. They all suffered under Hitler. Those were the judges. There were no German judges. There were no judges from any neutral countries. They were all judges representing countries that had a reason to be very upset and very angry at the Nazis. That's why we call it victor's justice.

48:25 Judge Ehrenfreund: And so they, then that was one of their defenses at this. They had no right to try them under that system just, just the victors, just the Allied nations that had been, been attacked by Hitler as the judges. Another defense was ex post facto. The first two counts you remember were, had to do with waging aggressive war, and ex post facto means you, you pass a law after the crimes has been committed. Well, their defense with this is all, this is ex post facto to charge us with waging aggressive war, because there was no crime of aggressive war at the time that Hitler started, the time Hitler invaded Poland. So that was the argument that they made, that argument of ex post facto. Still, another defense argument was well, you did it too. Tu quoque, in Latin. You did it too. What about Harry Truman? Why isn't he here? He dropped the atom bombs, killed hundreds of thousands of Japanese civilians, innocent people when he dropped those atom bombs. Why isn't he here? Isn't that a crime against humanity? And they wanted to call Harry Truman to the stand. They wanted to call Churchill to the stand because Churchill had ordered the carpet bombing of certain cities in Germany. Dresden was considered the worst. Why aren't they here? Why aren't we prosecuting them for crimes against humanity? And the final, final defense, the legal defense, was the one that was taken, taken, taken seriously. That was superior orders, that they were ordered by Hitler to do these acts. If they didn't do them, they'd be shot. That was their defense.

50:20 Judge Ehrenfreund: Well that had to be taken seriously. The others were all dismissed out of hand, but that had to be taken seriously. And Jackson did take it seriously, and he made a compromise. He said well, we'll consider that evidence of superior orders not as going to the guilt or innocence. We're not considering for that purpose, but we'll consider it as going to the punishment, or what punishment is meted out, that you were under superior orders. So that's, that's the way that was handled. I'm going to tell you ladies and gentlemen about something that happened during that trial that has not really been taken, to me it hasn't been taken seriously by, by historians. One of the supposed high points of the trial was when Jackson cross-examined Hermann Göring. This was billed as a big thing when it was, when that cross-examination began - kind of the title fight between

the two heavyweights, you know? And Jackson began his cross-examination with Göring, asking him questions and Göring would answer with - Jackson wanted yes or no answers, and Göring would answer with long explanations. And Göring tried to close him off. He says no, just answer. You just answer yes or no to that question. That's all you have to do. Your attorney can ask you further if you want to say something else, but when I'm cross-examining you, you just answer the question. And my question has called for yes or no answer. And Göring said, well I want to explain. Jackson said, no, I object to that. And the court stepped in.

52:14 Judge Ehrenfreund: Now on the court was a British, the Chief Justice was a British judge, Geoffrey Lawrence, and beside him was the American judge, Francis Biddle. And for some reason when, the microphones were such when, when Biddle was whispering, when Biddle was whispering to Lawrence, well you could hear Biddle's voice whispering to Lawrence. At any rate, when, when Jackson was talking to Göring, and asking the court to limit, limit Göring's explanation, the court stepped in said, no, no Justice Jackson. He has a right to explain. Let him explain. Jackson was furious. He said, you're letting him, you're letting him, you're letting, giving him a trial that he never gave any person. You're, you're ruining this whole trial. Jackson was furious if, he figured he know, he knew the rules of cross-examination. He wasn't being, I'm not being unjust, he thought to himself. I'm, I'm letting, he can, his attorney can bring in these matters. But when they lost, when the chief justice, judge told him again and again, no, you, he has a right to explain. Let him explain. Jackson became so furious that the judge called a recess and Jackson did something in that moment that we didn't know about it. No one knew about it, hardly no one, just Jackson himself, and what, then the other person that [unclear] and his secretary, she knew about it. But we didn't know about. What Jackson did was he barged he, during that recess, he barged into Judge Biddle's chambers.

54:05 Judge Ehrenfreund: He was angry. He said I didn't come over here. He just barges into his office without telling anyone, without telling any of the other members of his staff. I know he didn't tell them because I've interviewed all of them while they were still alive. They said they didn't know this was going on. He barged into Judge Biddle's office and said, what are you doing out there? You're sabotaging me. I didn't come over here to be sabotaged by my own American judge. You're making a mockery of this trial. They're laughing at me out there, Jackson said, in effect because the way you're letting Göring go on. And then Biddle said, calm down, calm down. You see, Jackson and Biddle were friends back in Washington. Calm down now. Jackson wouldn't calm down. He railed against Biddle. He said if you don't change your rules I'm going home. I'm going to resign from this trial. And Biddle tried to calm him down, and there's the associate judge with Biddle, John Parker, he tried, they tried to calm down. They told him what a great job he was doing, what a wonderful opening statement he had made, and they tried to calm him down. Jackson finally left, but he was still in a huff.

55:22 Judge Ehrenfreund: When the trial was over, remember there were eight, there were 21 altogether sitting in the dock, 21 men on trial. One was being tried in absentia. That was Martin Bormann, who they couldn't find. He was Hitler's secretary. There were 21 in the courtroom. Of the 21 there, eighteen were found guilty of at least one count. Of the eighteen found guilty, eleven were sentenced to

hang. Of the eleven sentenced to hang, as most of you know I think, only ten were hanged because when they went to get Göring - and I was there that night - when they went get Göring from a cell to bring them down to the gallows in, in the gymnasium where they had the gallows set up, Göring was dead. He somehow smuggled a cyanide pill into his cell and he was dead. So now ladies and gentlemen there it is, over 65 years later. You may well ask, was it all worthwhile, this Nuremberg Trial? What did it accomplish? Did it really accomplish anything? Was it really the greatest trial in history? It wasn't just a trial of the victors over the vanquished. Was it really a beacon of justice that Jackson wanted? Well ladies and gentlemen, yes it was a beacon of justice. It was a great trial and still hailed as the greatest trial in history. It left a great legacy.

57:00 Judge Ehrenfreund: First of all it left a record, a record of what the Nazis did, a record of the Holocaust right there in black and white, a record that showed, showed the German people how Hitler had duped them and led them into disaster, a record for the American people to see why we had to enter World War II. The record is very important. As you know, there have been in the past few years several movements denying the Holocaust. Those movements have been fairly powerful. Even the President of Iran has said, no that's just a, that's just a myth concocted by the Jewish people, that Holocaust. Well, there is the record to show that, how weak their arguments are, denying the Holocaust There's a record to show. Of course, we've, we've had uh, we've had uh, survivors of the Holocaust tell their stories, but the record are stories of witnesses under oath - an authoritative reliable, reliable record - and that's why that record is so important. It showed how low a highly civilized nation like, like Germany could sink under ruthless dictatorship. It showed that the rule of law could be applied, could be used to punish and not prevent the atrocities of war. It showed, it showed so many things.

58:47 Judge Ehrenfreund: Professor Patterson was talking about the medical side of it. One of the other trials, one of the other 12 trials was, it was a medical trial against the Nazi doctors. And that, that was about how the Nazi doctors would experiment on these concentration camp inmates, the Jews, experimenting on them. They would throw them in ice-cold water to see how long they could stay alive before freezing to death. They would insert viruses into them to see if they would die or live from these viruses, see if their viruses worked. And these doctors were brought to trial for these crimes, these crimes against humanity. And the judges, finding those doctors guilty and sentencing them to death, it created a new code, a new medical code. And you know we're all affected by that medical code today. That medical code started out as just if you're going to have a doctor, or scientist is going to experiment on a human being, he has to have consent of that human being. Well, that developed into what we have today - the doctrine of informed consent. Every time you go to a doctor and he's trying to do any kind of invasive procedure on your body, he asks you, or that his nurse asks you, to sign that you know what he's going to do, and you give his permission to do it - the doctrine of informed consent. Next time you go to a doctor and the nurse or doctor asks you to do that say, you know where that came from? That came from the Nuremberg Trial.

1:00:27 Judge Ehrenfreund: So, so the, the two main, there are two main legacies that came out of that trial, one was human rights. You know like when, before Nuremberg, if people in the community or people in the country were abused, if their, their colleagues were, if some of them were murdered or enslaved, they had no recourse. They had no rights to complain to anyone. Nuremberg changed all that. Nuremberg changed all that and said no. You know when, when Jefferson wrote the Declaration of Independence he said, we are endowed - we're all endowed with our creation, by our creator with certain inalienable rights. What Jackson did, Jackson did was expanding, expanding those rights to an int-, bring them to an international level that all human beings have rights. That's what Nuremberg said, all human beings, and they can complain. They have a right to complain. They can go to either the United Nations or now to the International Criminal Court. It gave human beings rights for the first time, and it changed, we don't realize how it changed the whole perspective and relationship between, between citizens of a of an oppressed country and their governments, because the governments knew for the first time that if they abuse their people if they murdered the people or enslaved them, they can be brought to justice in a court of law. They can be punished for that. And the citizens, oppressed citizens know that if they are treated that way, they have, they have someone to go to. They can complain to the United Nations or to the International Criminal Court. So the human rights step is very important. And the other big step in my mind is the most important one, is fair trial. It left a legacy of fair trial, that's handed down through the centuries, the legacy of it. Simply this, this precept that every man accused of a crime, no matter how heinous, how serious, how terrible the charges may be, that person is entitled -