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Binger, Folsom, Zimmerman To Discuss American Family

Prof. Kluckholm To Be Moderator For Forum Featuring Sociologists

What's Happening to Our Family System? will be the topic under discussion when the Harvard Law School Forum meets this Friday, 8 p. m., at Rindge Tech Auditorium. Speakers will be Dr. Carl Binger, psychiatrist and psychoanalyst; Dr. Joseph K. Folsom, Professor of Sociology at Vassar College, and Dr. Carle Zimmerman, Professor of Social Relations at Harvard. Professor Clyde Kluckholm of Harvard's Social Relations Department will act as moderator.

The speakers will concentrate on the breakdown of our family system, the tremendous increase in the divorce rate and factors contributing to the rising rate of juvenile delinquency. They will also examine the influence of today's unsettled condition on these problems.

Dr. Binger, a graduate of Harvard College and Harvard Medical School, and winner of the 1945 Norton Award for his book *The Doctor's Job*, will emphasize the importance of subjective analyses in approaching a solution to these problems.

Professor Zimmerman, author of *Family and Civilization* and of *The Family of the Future*, soon to be published, received his Ph.D. degree from the University of Minnesota, and has been a professor at Harvard for 17 years. He is expected to interpret the direction of social change as due to a gradual breakdown of the family system.

A totally different point of view on this subject will be taken by Professor Folsom, editor of *Plan for Marriage*, former editor of the *American Sociological Review*, and contributor to leading sociology journals. He believes that the direction of the family system is toward

NEWS IN BRIEF

LAWYER'S GUILD

The fifth seminar in the Lawyer's Guild's series on "The Law Protecting Civil Liberties" will be given this afternoon at 2 p. m. in Langdell North. Professor Paul A. Freund will discuss Federal Intervention to prevent the denial of rights by state officials.

Professor Freund, who received his S.J.D. from Harvard in '32, went down to Washington in that same year to serve as secretary to Justice Brandeis. From 1936 to 1939 he was active as Special Assistant to the Attorney General, and since 1940 has devoted his energies to the Law School faculty.

Each seminar of this series is complete in itself. All students are invited to attend.

RADIO PROGRAM

Student activities at the Harvard Law School will be featured on "Young Idea," a public affairs program to be heard on station WHDH tomorrow evening at 9:35 p. m. Appearing on the program will be Hugh Calkins, President of the *Harvard Law Review*, Harry Riddick, President of the Legal Aid Bureau, Richard A. Holman, President of the Forum, and Jerome Shestack, President of the Record.

MASS. SUPREME JUDICIAL COURT

The Supreme Judicial Court for the Commonwealth of Massachusetts will be in session for a full week beginning next Monday, December 6, at 10 a. m. in the courtroom on the 14th floor of the Suffolk County Courthouse, Pemberton Square, Boston. Criminal cases will be

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DR. CARL BINGER

Analysis of Nazi Ilse Koch Case Reveals Bases of Trial and Review

By Stanley Benson Gomberg, 3L.

(The author, assisted by Ralph Neibart 3L, has made an investigation of the procedural and evidentiary basis of the widely discussed Ilse Koch case. In the concluding article the author will formulate recommendations for an adequate disposition of the case. Ed. Note.)

Ilse Koch was convicted by the Army War Crimes Court at Dachau on August 14, 1947. She had been tried in connection with her participation in the administration of the Buchenwald Concentration Camp, and the trial, which was widely publicized because of Frau Koch's alleged collection of human skin for lampshades, resulted in a life sentence. On June 8, 1948, the sentence was commuted by the Army to a four-year term, ending in October, 1949. The reduction, which was announced publicly some four months later on September 15, 1948, resulted in considerable controversy, aided by strong statements by several members of Congress and some of those intimately connected with the Koch prosecution. This has resulted in a Congressional investigation and reportedly a review of the case by President Truman.

Shortly following the Army's announcement, Senator Leverett Saltonstall, of the Senate Armed Services Committee, sent to the Army a letter which he had received from Mrs. Hans Loeser, asking the Army for an explanation of its surprising decision.

The gravamen of the Army letter Senator Saltonstall received, signed by a Colonel S. P. Walker, War Department, was that the "Reviewing Officer found that on several occasions she (Ilse Koch) reported inmates for violations of camp regulations, knowing that severe punishment would be administered; that she herself had beaten an inmate on one occasion; that she had encouraged, aided and participated in the common design." But, further, that there had been no "convincing evidence" to substantiate any connection between Frau Koch and the extermination of inmates to secure human skins.

The letter continued that the record had been reviewed not only by the Office of the Deputy Judge Advocate of War Crimes, but also by four other officers in the legal chain of command. "The decision is, of course, final," it concluded. "Neither under procedure for these trials nor under accepted policies of American military and civil courts could the sentence now be increased by any authority."

Four days before that letter was sent, Senator Baldwin of Connecticut, in answer to his own request for information, received a reply from the Secretary of the Army, Kenneth C. Royall. With the

LAW SCHOOL DORMITORY

Approximately 60 present third-term students will be able to move into Hastings and Perkins Halls replacing the same number of seventh-term students graduating in February. The replacements will be made from the list of 140 unfilled applications filed by the members of the second-year class. However, all second-year men who have previously made application for Law School dormitory space will be required to renew their applications at the Comptroller's Office, Lehman Hall, before Friday, December 31, if they wish to be considered for space in the Spring term.

Men graduating in February occupy four complete triples and three full doubles in Hastings, and five doubles in Perkins. The 28 men to occupy these suites will be chosen by lot from among the eligible during the first week in January. Present third and sixth-term students living in the dorms who lose a roommate in February will be allowed to choose a new roommate from among those persons who have made and renewed their applications.

Choate Wins Semi-Final; Thaxter Presiding Judge

By defeating the Hall Club in the semi-final of the Ames Competition last night in Langdell Courtroom, the Choate Club won a place in the final round to be held next term. They will meet the Mentschikoff Club, which won its semi-final argument on November 17. Winning oralists for the Choate Club were George E. Lee and George J. Zazas.

Berman, Soviet Law Expert, To Lecture At Forum

Visiting Law Professor Harold J. Berman will give three lectures on *The Spirit of the Soviet Law*, sponsored by the Harvard Law School Forum, next Tuesday, December 7, Thursday, December 9 and the following Monday, December 13, at 8 p. m. in New Lecture Hall. These lectures will be open to the public without charge.

Professor Berman is currently teaching a third-year course in Comparative Law: A Comparison of Soviet and American Law. In addition, he has been appointed a member of the Harvard Committee on International and Regional Studies, is teaching Regional Studies 214, a course on Soviet State and Law at Littauer Center, and is doing research at the Russian Research Center.

A graduate, summa cum laude, of Dartmouth College, where he edited the Dartmouth newspaper, he had an exchange fellowship at the London School of Economics from 1938 to 1939, and is a graduate of the Yale Graduate School and the Yale Law School, where he completed his studies, cum laude, in 1947. His army service included a long stay in the European Theatre. He is on the faculty of Stanford University as an Associate Professor of Law.

It is expected that the first lecture will emphasize the basis for Soviet Law, both case and statute, in Russian history and the impact that that history has had on Russia's legal institutions. The second will be more specifically related to Marxist theory and its influence on the development of Soviet Law. The final lecture will focus on specific features of Soviet Law not inherent in either Russian history or Marxist theory. Prof. Berman will include in this last talk a discussion of Soviet Russia's response to problems which affect all legal systems today.

Dr. Moritz Discusses Role Of Expert Medical Evidence

The Functional Relationships Between Law and Medicine, Medical Witnesses and Medical Evidence was the subject, last week, of the first of a series of four Wednesday afternoon lectures to be given by Dr. Alan R. Moritz, Frances Glessner Lee Professor of Legal Medicine at Harvard Medical School.

Pointing out that part of the training of a doctor concerns the influence of law on medicine, Dr. Moritz indicated the influence of medicine on law by expressing his opinion that medical evidence played an important part in approximately 50 per cent of certain branches of civil and criminal cases heard on the appellate level.

Tort cases, where the plaintiff seeks compensation for personal injuries, are the first type that comes to mind. In such cases, the lawyer faces three problems of proof: First, that the injury was sustained at the time of the accident; Second, that there is a direct causal relationship between the accident and the present disability; and Third, the extent of the present disability.

These same problems of proof also arise in workman's compensation cases. Life insurance and homicide cases, however, present different problems. To begin with, a death must first be established. This can be a problem in itself where there are so few remains of the victim that there is difficulty in deciding

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The case was *Jones v. Wyland*, patterned after the Alger Hiss (LL.B. '29) and Whittaker Chambers controversy. The defendant had called the plaintiff a former member of the Communist Party in an impromptu remark made during a broadcast radio program. The case was dismissed in the lower court. Suit was brought in Ames, where local network stations carried the broadcast, though the program originated in the State of Austin. The questions presented were whether the statement constituted either slander or libel, and if so, whether the laws of Ames or of Austin were applicable.

Chief Justice was Sidney St. F. Thaxter, LL.B. '07, Associate Justice of the Supreme Judicial Court of Maine. Associate Justices were Horace E. Allen, LL.B. '15, a member of the Massachusetts Board of Bar Examiners, and Claude R. Branch, of Choate, Hall and Stewart.

Oral counsel for the Hall Club, arguing for the defendant, were Maxwell E. Greenberg (UCLA '41) of Los Angeles, Calif., and Benjamin W. Nimkin (Harvard '43) of New York, N. Y. Counsel on the brief were Leon M. Cooper (UCLA '44) of Los Angeles, Calif.; Edward T. Matheny, Jr. (Missouri '44) of Kansas City, Mo.; Mitchell S. Rieger (Northwestern '44) of Evanston, Ill.; James S. Rosenman (Harvard '46), of New York, N. Y.; Marvin Sparrow (MIT '46) of Bridgeport, Conn., and James M. Wolf (Harvard '43) of Albion, Nebr.

Oral counsel for the Choate Club, (Continued on page four)

Myers Heads P. B. H.; Announces Directory, And Christmas Dance

In elections held last Tuesday, the Law School Committee of Phillips Brooks House elected new officers who will take office immediately and serve until June, 1949. William S. Myers, Jr. (Okla. '47) of Tulsa, Oklahoma replaces E. Thayer Drake (Harvard '44) of Chatham, New Jersey as Chairman. The new Treasurer is Bordon F. Beck, Jr. (Harvard '45) who succeeds Marshall M. Massey (Harvard '47) and Reuben Katz (Univ. of Conn. '46) replaces the new Chairman as Secretary.

The Law School Committee announces that the next Law School dance will be held at the University Club on Friday, December 10. It will be a formal dance with Bob Norris' orchestra providing the music from 9 p. m. to 1 a. m. Tickets will be available at Gannett House from 1-5 p. m. from December 6-10 at \$2.40 per couple. Only 200 tickets will be sold so that everyone who purchases a ticket will be assured of a table. Herman F. Scheurer, Jr. (Amherst '47) is the dance chairman.

The Committee also wishes to announce that the new Student Directories will be distributed to the students sometime within the next week. They will contain every student's name, address, telephone number, membership in student organizations, marital status and home address. These directories are paid for by advertising solicited by members of the Law School Committee so that they are free to all Law School students. Sidney D. Pinney, Jr. and Martin P. Mosier are the members of the Committee who are responsible for this year's directory.

Another service of the Committee, which will soon be available to the students who need financial help, is the Law Student's Loan Library which will help those students needing new books for the next term.

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Editorials

A recent survey compiled at Columbia Law School reveals, according to the *Columbia Law School News*, that there is a remarkably high correlation between the performance of the student on law school examinations and that of the graduate on the bar examination.

"Presumably then," says the *News*, "members of the Columbia Law Faculty, in evaluating the effort of the student at problem-analysis and essay-answer on a law school examination, apply the same or similar criteria as will the bar examiners later in distinguishing a satisfactory from a failing answer."

This being so, the *News* finds it difficult to see why any student should leave the school without knowing what deficiencies in his past performances exclude him from the category of those who, according to the statistics, may take the bar exam with the assurance that their chances of initial success are excellent. Certainly the student is "entitled to any available information as to weaknesses likely to jeopardize his chances of success on the bar exam."

As a solution the *News* suggests that the student be allowed to examine his answers and compare them with a number of "A" answers which have been mimeographed and distributed for that purpose. In this way he would have a valuable basis for detailed comparison. He would learn, possibly, that lack of information as to settled law had prevented his adequately resolving the issues of the exam problem, or that he had failed to recognize all the issues involved in the problem. He might find by the comparison that he was deficient in neither of these respects, but that his ideas had suffered through poor composition.

At any rate he will be put upon fair notice of his faults. He may then be stimulated to corrective action along concrete positive lines.

If the high correlation between law school grades and bar examination results does not pertain at Harvard, we should be very interested in finding out. But if, as we suspect, the contrary is true, are not then the analysis and suggestions of the *News* inescapable?

J. S.

Letters to the Editor

To the Editor of the RECORD:

Graduate X, now seeking placement, has been asked, in typical fashion, to furnish a letter of recommendation from one of his professors. A prospective employer would not be impressed with the answer that Graduate X was one of 150 names on a seating chart and that any letter he could get would have to be written in terms too general to be effective. Graduate X in our case maintained an average of 68-70.

Even assuming that X will get a letter and will eventually find suitable placement, his difficulty (not exceptional) points to the problem of faculty-student relationship, or, more exactly, the characteristic gulf therein.

A proposal for an advisory system, similar to that employed in Harvard College, seems sound. Perhaps there might be a meeting which would last one-half hour every other week, with a member of the faculty assigned as advisor to the individual student, and which would be spent in discussing the progress and interests of the student.

Such a meeting would be an intolerable burden on the time demands of the faculty under present circumstances. But if the system were to be used in only one year—say the first year—

roughly 400 hours per month or about 14 hours per day would be required of faculty time. If a minimum of five recent graduates, interested in teaching law, were added to the faculty as "Assistants to Professors" (or some such title), each could devote three hours daily to meetings with students and still have much time to assist the faculty in such matters as lecturing, conducting seminars, grading examination books, etc.

If a first-year student had personal contact with some member of the faculty who might spot and aid in removal of obstacles, his introduction to Harvard Law School would, I submit, be a more enjoyable and fruitful experience. The plan could of course, be optional for students.

Perhaps others share the view expressed here that Harvard Law School has a moral obligation to those students it accepts: to help them and make their stay here as productive as possible. If five men who fall by the wayside in their first year could be saved, it would be worth the added expense involved in such a proposal.

And, of course, Graduate X would be able to get an effective letter of recommendation from an associate of the faculty who knew him quite well.

In view of the plans for construction of new dormitories, to increase the comfort and efficiency of future law students, I respectfully suggest something on the order of this very roughly sketched scheme be considered.

Edward Wolper, 3L

Off the Record

Wills and Verse

The will of Walter Malloy was filed for probate in Columbus, Ohio last September. If more such wills were written, we see how it might warm the cockles of Professor Leach's poetic heart and save him infinite pains in future editions of his casebook. And perhaps we could get Archibald MacLeish, LL.B. '19, to come and give lectures on wills. Anyway here is the will in part:

"My mind is sound, my heart beats true,
And, realizing what I do,
I take my trusty pen in hand
So probate courts throuout the land
May, after I have passed away
And faced my God on Judgment Day,
Know my desires, and see to it
My will is carried out, to wit:
The home is in my good wife's name
And I request it stay the same,
But she may do as she sees fit
'Tis my advice, get rid of it
And move into a cozy flat
To cut expenses; that settles that.

"Should I survive my loving spouse
Hold title to our land and house
I will that, when I've run my race
My boy and girl shall share the place.
Should either one desire to live
In the home place, then they must give
Unto the other, what seems fair,
To purchase outright their half share.

"Now any other worldly goods
That I have laid away,
Will turn up in the safety box
And this is what I say:
My wife shall have the whole estate
As long as she may live
To spend, to hoard, to dissipate,
To share, to save, to give.
But when death's angel beckons her
Whatever may remain
Shall go unto my children
In this manner, I'll explain:
In equal parts to Betty, John,
Or should they not survive,
Apportion 'mongst their children
Who may yet remain alive.

"Of course there'll be other small trinkets
That naturally go to my boy,
There's my watch and my ring, in fact
everything
He can have, that he'd likely enjoy.
I lack a memento for Betty,
I don't own a thing she'd crave
So I send from above, just a heartfelt of
love
To cherish from now to her grave."

THE ROOT ROOM REVELER

Ah children, fix your optical parts upon the Root Room Reveler. He is the owner in fee simple of the chair in which he sits, his title being derived from seven semesters of terribly adverse possession. Note how he continually shifts his eyes from the poor student reading the latest *Life* to all those entering the room. These latter are his potential enemies for they would take the *Life* from its present holder before the Reveler can obtain it.

But no, he has sprung upon the unsuspecting reader and torn the magazine from his hands. The fight will last 15 minutes, children, and then the loser will have to content himself with last year's *Esquire*.

PUBLIUS

Gallery

ERWIN N. GRISWOLD
LAW SCHOOL DEAN



In June 1946, when Erwin Griswold, at 41, assumed the position of Dean of the Harvard Law School faculty the School was still facing the major problems of the post-war transition. With a student body at almost pre-war strength the faculty had committed itself to admit an additional thousand students by February 1947. The faculty, of pre-war size, was confronted with a much larger student body. Housing for single students and for the extraordinary number of married students, was a very real and immediate problem.

Dean Griswold came to the job, after a distinguished career as a student at Harvard Law School, a government official and a professor of law. Having graduated from Oberlin College, the traditional family school, in 1925 with an A. B. and an M. A., he came to Harvard that year. In 1927-28 he was president of the *Law Review*. In 1929 he received his S. J. D. and returned to Cleveland to practice law there for what he thought would be the rest of his life. But, after three months, the government called.

In December 1929 he accepted a position in the Office of the Solicitor General of the United States, rising to be a Special Assistant to the Attorney General. During his years with the government he worked on briefing and arguing cases in various federal courts, gradually coming to specialize in Federal Taxation cases. In 1933-34 he briefed and argued over twenty cases before the United States Supreme Court.

In 1934 Mr. Griswold came to Harvard as Assistant Professor; in 1935 was appointed full Professor and in 1946 was appointed to the Charles Stebbins Fairchild chair in law. In June, 1946, he became Dean, succeeding James M. Landis, former Chairman of the Civil Aeronautics Board.

Dean Griswold's principal teaching has been in the fields of Federal Taxation, in which he is an outstanding authority and tax consultant; Conflicts of Laws and Trusts. He is editor of *Cases on Federal Taxation*; co-editor of *Cases on Conflict of Laws*, and author of *Spendthrift Trusts*. He has been an advisor for the American Law Institute's Restatements of the Law of Trusts, Restitution, and of Judgments, and is now working with the Institute's Advisory Committee which is rewriting the Federal Income Tax law.

In his spacious, brightly lit office in Langdell Hall, Mr. Griswold sits behind a large desk covered with books and papers. His day is taken up with teaching, conferences with numerous visitors, dictating letters, making decisions and performing the countless tasks that are of the job of administering the affairs of a large organization. The cares of office have not visibly affected him. His voice is clear and sharp; he knows what he wants and expresses it in a minimum of words.

"The only real tradition of the School, as I see it, is to do the best job we can," the Dean says. "The School has, and accepts, the responsibility for giving the best education in the law which it possibly can."

Before the war, many third year courses were taught in a regular class and also in a seminar. Third year men were expected to take at least one seminar. In this way they could get something analogous to the training received by *Law Review* men.

This was not feasible during the postwar period marked by a greatly expanded student body. The calibre of teachers the School wanted would not come to Harvard just to cope with the emergency. However, now as the student body approaches pre-war size, the Dean would like to add to the faculty a number of teaching fellows who could give to the student the invaluable training that can be gained from working in small groups.

There is too much concern among students about grades, the Dean says. He would be in favor of one numerical average grade at the end

Sub Judice

AMBER ANNOTATED

The Attorney General of Massachusetts brought a petition in equity seeking an adjudication that the novel *Forever Amber* is obscene, indecent or impure. Answers were filed by the publisher, a book store, and the Boston Book Merchants' Board of Trade. Mass. Statute 1945, c. 278, Sec. 28C, under which the petition was brought, provides: "Wherever there is reasonable cause to believe that a book which is being sold is obscene, the Attorney General shall bring an information or petition in equity in the superior court directed against said book by name." Provision is made for a hearing at which the court may receive the testimony of experts on the literary, cultural or educational character of the book. The book called as witnesses two experts on psychiatry and one on literature; the Attorney General called one on psychiatry. The judge below found the book was "not easy reading and it required several hours of my time every day for seven days to get through it. . . . Sexual episodes are numerous, mostly those of Amber's life, but also many of others. The book goes into no details of sexual relations which might arouse erotic emotions and lead to immoral behavior." When a decree was entered in favor of the book, the Attorney General appealed. *Held*: for *Amber*. "It is not to be condemned merely because it may contain somewhere between its covers some expressions which, taken by themselves alone, might be obnoxious to the statute." Also, it was error to admit evidence by the experts on psychiatry on either the tendency of the book to incite lascivious thoughts in the average adult reader or on its violation of the current sex mores.

"Some of the publisher's advertising was not in the highest tastes. There was an exhortation to the reading public that in *Forever Amber* there is a heroine who will remind them of Scarlett O'Hara and Catherine the Great rolled into one dainty package of dynamite and surrounded by a score of inflammable young Casanovas from the corrupt court of Charles II. The advertisements, however, are not part of the novel, which in final analysis must meet the test of the statute upon what is contained within its own covers." The literary expert testified that the book as an historical romance was at least as correct as those of Cooper or Scott, that the Restoration period was in itself extremely cynical, and that it would be impossible to write of the court of Charles II ignoring the sexual theme.

The book when read in its long entirety does not offend against the statute. *Forever Amber* has historical purpose. There are detailed descriptions of Newgate Prison, the Great Plague and the Great Fire, and a real attempt is made to portray life at the court of Charles II. "Unfortunately it is that sexual episodes abound to the point of tedium. The paramount impression is of an unfortunate country and its people as yet unfreed of the grasp of the Stuarts. The reader is left with an estimate of an unattractive, hedonistic group, whose course of conduct is abhorrent and whose mode of living can be neither emulated nor envied."—*Attorney General v. Book Named "Forever Amber,"* 81 N. E. 2d 663 (Mass. 1948).

of each year rather than a grade in each subject. And he knows as a fact it isn't true that only the high ranking men succeed in the law. Taking his own class as an example, he stated that many men who were in the middle grades have made outstanding careers for themselves and have played a very vital part in their community life.

Whatever their grades, there may be some real difficulties for graduates within the next few years. The bar, during the war years, became geared to working with fewer lawyers and it will take time to go back to the old ways. The problem is aggravated, of course, for married men who must make more money than many firms are willing to pay. One solution to the problem might be for graduates to strike out for themselves right after graduation, preferably two or three going into partnership, but that depends on local conditions. In the meantime, the School has expanded its placement service, feeling that, "While we are not obligated to place every man in a job, we do feel we have an obligation to do everything we can to help him get one."

Dean Griswold has met successfully many of the problems which he encountered when he sat for the first time behind the Dean's desk in June 1946. And now with an eye on the future, he and his faculty have already made and presented plans for an intellectually and physically expanded Law School. The Law School wing of the new graduate dormitories and the World Law Center are two examples. If it takes a man of firm self-confidence and of deep faith in what he is doing to meet the demands of the Dean's office, Erwin Griswold seems to have both.

Alumni Notes

LL.B. '32—Paul M. Herzog, chairman of the National Labor Relations Board, presided at a convocation on "Human Values in a World of Science," held at Hobart College (Geneva, N. Y.) on October 22.

LL.B. '33—David L. Landy, a partner in the law firm of Moot, Sprague, Marcy & Gulick, Buffalo, has been appointed an instructor in Corporations at the Law School of the University of Buffalo. Mr. Landy was president of the *Harvard Law Review* in 1932.

LL.B. '38—John D. Carbine was elected president of the Harvard Law School Club of Vermont at a recent meeting. George McKee (LL.B. '26) was elected secretary.

LL.B. '39—Lazar E. Levinthal, having just recently resigned as an Assistant Attorney General of the State of New York, has formed a private law firm with Arthur S. Lowell (LL.B. '41). Prior to entering the service, Mr. Levinthal served on the staff of Mayor O'Dwyer when he was District Attorney in Kings County, Brooklyn. The firm will have its offices at 1819 Broadway, New York City.

LL.B. '47—David Kallman, a former member of the editorial board of the *RECORD*, is now associated with Philip Davis in the practice of law at 501 Fifth Ave., New York City.

ILSE KOCH—(Continued)

the Army, on the whole, has seemed to be somewhat reticent to make a full and adequate disclosure of the record and other important facts. The press, however, took the initiative. In its entirety the story had several sensational aspects, all of which made good copy. The public readily remembered the horrors of the human skin collection found at Buchenwald. Also, while being held for trial Frau Koch had conceived a child under mysterious circumstances. This added color. But the most recurrent underlying theme was one of suspicion of the Army's motives. Even before the announcement of the sentence reduction, in certain segments of the press there had been a growing criticism of an alleged Army policy of leniency toward German prisoners and other former Nazis, the motive behind this policy being a matter of even further suspicion. The commutation of Ilse Koch's sentence seemed to this segment the most crass evidence of this program.

Dachau Procedure

Actually, the Dachau trials represented but one of four kinds of trials prosecuted by the United States against alleged German war criminals. The most celebrated cases, of course, were those presented before the International Tribunal in Nuremberg, pursuant to the four power London Pact of August 8, 1945. It was later decided under the same agreement that each power would try individually whichever criminals it found in the territory it occupied. The United States conducted 12 of these an-

cillary trials. In them the judicial personnel consisted of civilian American judges.

There were at the same time trials of both criminal and civil nature conducted by the United States Army, pursuant to Article 5 of the 1945 London Agreement, and under Control Law No. 10 and Ordinance 7, promulgated by the military government of the American Zone. The criminal trials, of which Ilse Koch's was an example, were conducted under procedure patterned after Army Court Martial Procedure, and the judges were Army personnel, not necessarily of a legal background. In the Koch trial the bench consisted of six colonels and one brigadier general, who presided. The bench was assisted by a law member, who gave advice to the bench as to the admissibility of evidence and matters of similar import.

It came as somewhat of a surprise that Ilse Koch had been tried by men whose main jobs at the time were not judicial and who were not chosen by reason of legal experience.

International Law Violated

More information came from George Albert McDonough. McDonough left five years of service behind him in the Federal Bureau of Investigation and the Navy when he went to Germany as a civilian member of the office of the Deputy Judge Advocate for War Crimes. It was this office that handled both the prosecution and review of the Ilse Koch case. Back in private practice now, at 53 State Street in Boston, McDonough knows of much of the technical background of the case.

Contrary to widespread belief, McDonough explained, Ilse Koch was not tried under the Articles of War. The Articles are applicable only to those in military service and those civilians serving with the Army in the field in time of war. Rather Frau Koch was accused of having violated the Rules of Land Warfare, a body of the International Law. These rules had been crystallized at the Hague and Geneva Conventions, but since it was presumed at the Dachau Trials that the treaties there arrived at were now codifications of the International Law as it then existed, even non-signatories were considered to be bound, and subjects of those non-signatories were tried for violations of the precept adopted in the Hague and Geneva Conventions. In addition, the common law of piracy and other international legal concepts were used. The law of piracy played its part particularly in venue problems. Occasionally, the defense would plead in abatement that the court had no jurisdiction inasmuch as the alleged criminal acts were committed in territory occupied by another power. Piracy law was then drawn in by way of analogy. Under that law, pirates are triable where found.

The Indictment

The indictment, under which Frau Koch was tried, was one typical of those used in the Army war crimes cases. The indictment was drawn up on information received by Army investigation teams, who would interview large numbers of concentration camp inmates and other members of the population. The indictments used in the Dachau trials were generally headed *Violations of Laws and Usages of War*. Ilse Koch's indictment was followed by the words, "While acting in pursuance of the common design Frau Koch (et al.) did wrongfully and unlawfully aid, abet, and participate in the operation of the Buchenwald Concentration Camp wherein Frau Koch (et al.) did wrongfully and unlawfully beat, torture, starve, and kill Allied Nationals of Great Britain, France, Czechoslovakia, Poland (etc.), and who were within the custody of the Third Reich."

According to the September 23 press release of the Judge Advocate Division, EUCOM, "the prosecution established that the Buchenwald concentration in Northern Germany and its 100 sub-camps with a population of 80,000 males and 23,000 females was operated by the accused (31 Dachau defendants) who participated in the general mission of torture and abuse of the inmates by starvation, beatings and a systematic mis-

treatment and killing. The death rate reached a high of 5,000 a month toward the end of the war." If the "common design" referred to in the indictment is a concept similar to that of common law conspiracy it would be difficult to justify the reduction to a four-year sentence, inasmuch as Koch was found guilty of "aiding and participation in the common design." However the term "in pursuance of the common design" was not taken to mean the same thing as "in conspiracy with." Common law conspiracy requires proof of the elements of combination and a prior agreement toward an illegal or unjustified end. In general, all conspirators are punished equally. On the other hand, common design required only proof of consensual presence at the scene of the crime, and the punishment of those engaging in the criminal activity was not necessarily the same. That is after it had been found in a previous trial, that the operation of a particular camp was illegal, it was then sufficient in a later case to submit evidence that a particular guard was present in that camp at the time when its operation was illegal. He was charged with acting in pursuance of the common design, and was sentenced, in the words of McDonough, "according to how the particular court felt about the theory of common design." The punishment to one member of the camp therefore had no necessary relationship to that of other members.

Baldwin Wrong

Therefore, Senator Baldwin misunderstood the legalistic construction given to the term "common design" by the Army. When the Senator in his letter to Secretary of the Army Royall commented that Ilse Koch had been found to have engaged in the common design at Buchenwald, which common design was unquestionably extermination and murder, it did not follow, contrary to Baldwin's implication, that Frau Koch was necessarily guilty herself of such criminal acts. The extent of her pursuit of the common design, and therefore the extent of her punishment, was for the determination of the court, subject to review. What

kind of review, is another question.

The Army, it may be mentioned, may possibly be subject to criticism because of the construction which it has given to the term "common design." Article 6 of the London Agreement of 1945, under which the trials were conducted, sets out three general types of crimes, including Crimes Against Peace, War Crimes, and Crimes Against Humanity, each category being subdivided. Immediately following is the phrase: "Leaders, organizers . . . and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed in execution of such a plan." However, it seems clear that a strict construction of this wording would result necessarily in the death penalty for all Germans in any way connected with concentration camp administration. It is not likely that this was intended. It is also of no small import that the decision in the Nuremberg Trials construed this section to be applicable alone to the Crimes Against Peace, for which Ilse Koch was not tried.

Methods by which the trials were conducted were taken largely from American municipal law (i.e. in distinction to international law), German lawyers, not familiar with our trial methods, often expressed themselves amazed at our manner of direct and cross examination. Under usual continental procedure, counsel may submit questions to the judge, but the judge, at his discretion, interrogates.

It is likely that even some Americans were concerned with the broad rules of evidence that were employed. The body of evidentiary precepts could be stated simply as follows: any matter is admissible which is of probative value to the mind of a reasonable man. This broad rule, taken from rules applicable to many administrative procedures in our country, was theoretically subject to certain limitations, such as the best evidence rule. This required the prosecutor and the defense counsel to introduce the testimony

(Continued on page four)

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Calendar

LEGAL WORLD
Law Wives

The Law Wives are giving a card party tonight at Kendall House at 8 o'clock. There will be a choice of games. Husbands are welcome.

Law and Medicine

Dr. Alan R. Moritz, Frances Glessner Lee Professor of Legal Medicine at Harvard Medical School, will present the second lecture in his *Law and Medicine* series, entitled: *Official Medical Investigation of Deaths in the Interests of Justice*, at LNM at 5 p. m. today.

Glueck Club

The Glueck Club will hold its annual Fall Dance, this Saturday, Dec. 4, at 8 p. m. at Gallatin Hall, Business School. The Yearbook picture will be taken next Tuesday, Dec. 7, at 1:40 p. m. on the steps of Austin Hall.

UNIVERSITY WORLD
Sunday Services

Professor Reinhold Niebuhr of the Union Theological Seminary will hold services at Memorial Church at 11 a. m., Sunday, December 5.

Harvard-Radcliffe Glee Club

The Harvard Glee Club and the Radcliffe Choral Society, in conjunction with the Harvard-Radcliffe Orchestra will present selections from Handel's *Messiah*, at Sanders Theatre, 8:15 p. m., today and tomorrow, December 1 and 2. Tickets from 85c to \$2.40 will be on sale at the Coop, Music Building, and Phillips Brooks House.

Harvard Hillel

Harvard Hillel will sponsor a dance for graduate students this Saturday from 8:15 p. m. to 12 midnight at 5 Bryant Street, Cambridge. Couples only.

Graduate Forum

The Atom and the Public will be the topic presented by the Graduate Forum tonight at 7:30 in Littauer Lounge. Speakers will be:

Daniel Steinberg, M.D., graduate student in biophysics, speaking on *The Public's Stake in New Medical Research*.

Donald Michael, M.A., graduate student in social relations, speaking on *Public Reaction to Atomic Developments*.

Alan Barth, Neiman Fellow, editorial writer for the *Washington Post*, speaking on *The Responsibility of the Press*.

The meeting is free to the public.

Radcliffe Idler Players

The Radcliffe Idler Players present *The Way of the World* by William Congreve at the Agassiz Theater this Saturday, Monday and Tuesday, December 4, 6, 7, at 8:30 p. m. It will be the first production in modern dress, with costumes designed by Bonwit Teller. It is directed by Mrs. Mark DeWolfe Howe. The music is directed by Nicholas Van Slyck, 3C.

OUTSIDE WORLD

Ford Hall Forum

Seeing Things will be the topic discussed by John Mason Brown, drama and literary critic for the *Saturday Review of Literature*, this Sunday at 8 p. m. at Jordan Hall, N. E. Conservatory of Music.

SEMI-FINALS—(Continued)

arguing for the plaintiff, were George E. Lee (Talladega '42) of Baltimore, Md., and George J. Zazas (Harvard '47) of Indianapolis, Ind. Counsel on the brief were Robert A. Goldman (U. of Cincinnati) of Cincinnati, Ohio; Daniel D. Haber (Brooklyn '42) of Brooklyn, N. Y.; Jean C. Hiestand (Wesleyan '46) of Medina County, Ohio; Marcel S. Kistin (Wisconsin '35) of Brookline, Mass.; Grover W. Radley (Colgate '37) of Iliion, N. Y., and William R. Van Gemert (Harvard '44) of Roslindale, Mass.

The court made no decision on the merits. Both sides were congratulated on their excellent oral arguments.

CABOT—(Continued)

the United World Federalists, and the contribution the young lawyer can make in this field. He stressed the need for specific proposals and concrete plans such as the Chicago group has been formulating. In conclusion Mr. Cabot suggested that the Harvard group resolve itself into a constitutional convention to draft a World Constitution.

Students interested in joining the group, especially first and second year men, are invited to contact Ray Garrett at ELiot 4-3456 or William Condrell at POrter 7-8388.

MORITZ—(Continued)

that the remains are even human. Once past this hurdle, the probable identity of the victim must be determined. Perhaps most important is the establishing of the cause of death; whether it could possibly be suicide or even accidental. In this regard, medical evidence can often be the primary determinant in fixing the time of death.

Where the insurance policy contains a suicide clause or a double indemnity clause for death due to accident, the lawyer, in establishing the cause of death, must prove that the cause was not a pre-existing disease converted by accident to the fatal cause.

While mental competency of a party will be linked by all law students with contested wills and criminal cases where insanity is alleged, the same problem is also present in contract cases and actions for annulment or divorce. In bringing the latter two actions, insanity at time of marriage, sterility and impotency are often recognized as sufficient grounds for a decision.

Where medical evidence must be presented, a lawyer, in handling his case, should enlist the services of a medical specialist in the exact field; for example, a cardiologist where a disease of the heart is concerned or an ophthalmologist if there is an injury to the eye. The testimony of a general practitioner will not carry as much weight as that of a specialist because the evidence that a doctor gives is usually not factual evidence, but opinion evidence.

A doctor does not arrive at his opinion solely on the basis of observed facts such as the patient's temperature and skin color but rather he must depend partly on hearsay. The patient says he has a pain, when it started and how he thinks it started. The doctor's opinion is based on his experience and on what he has read concerning patients with similar symptoms (also hearsay). In effect when the doctor states that Mr. X has pneumonia, his diagnosis is only an opinion which cannot be proved unless the patient dies and an examination is conducted into the cause of death.

It goes almost without saying that where the medical evidence relates to insanity, the choice of a competent specialist is of the utmost importance. The lawyer in search of such a competent man can find one in his neighborhood by consulting the directory of Medical Specialists, a nationwide listing of doctors who have qualified as specialists by passing certifying boards.

The next lecture in this series dealing with *Official Medical Investigation of Deaths in the Interests of Justice* will be given by Dr. Moritz in Langdell North Middle at 5 p. m. today.

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FORUM—(Continued)



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NEWS BRIEFS—(Continued)

heard on the first part of the calendar. Further details of the cases to be tried will be printed in the RECORD next week.

FOOTBALL LEAGUE

Final standings of the teams in the Law School intramural football league were Chancery Club, first place; Lincoln's Inn, second, and Individualists, third.

The winning Chancery Club team is scheduled to play the team which wins the play-offs to be held at the Business School this week.

ILSE KOCH—(Continued)

of eyewitnesses when such witnesses were available rather than using their depositions. Generally in their application, the rules of evidence were extremely broad, perhaps tenuously so. In the words of Judge Van Roden, "The hearsay rule was disregarded entirely. Articles from newspapers (particularly *Stars and Stripes*), signed statements of the accused and by other persons (usually supported by affidavits) were received regardless of how they were secured, the Court having the duty to determine how much weight, if any, to give to such evidence."

The Verdict

Following the trial at Dachau of the Buchenwald officials, General Emil C. Kiel, president of the court, pronounced the sentences of the 31 prisoners who had been tried. Of them 22 were death sentences, 5 were given life imprisonment, and the remaining four were given terms ranging from 10 to 20 years. Under the procedure for automatic review followed by the Army, the records were then examined by the Deputy Judge Advocate's office, and by higher echelon offices. On recommendations made by these reviewing authorities, General Lucius D. Clay, European Commander, commuted six death sentences to life imprisonment, and one death sentence to 20 years. Two life sentences were reduced to 20 years, and one to 15 years. The most drastic reduction was that of Ilse Koch's term, her life sentence being cut to four years.

Although officially the commutation of Frau Koch's sentence was decided finally on June 8, 1948, the first public notice came when the *Stars and Stripes* in Germany revealed the story on September 15, three months later. The uproar then followed. When asked why there had been such a delay in announcing his decision, General Clay answered that his public relations staff had delayed because, in his words, it "had not recognized its news value."

(To be concluded)

DALTON-ELCOCK BAR REVIEW

The Fall Review, preparing candidates for the Massachusetts Bar Examination to be held late in December, began Tuesday, October 12, 1948 and will end late in December.

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