

The Harvard Law School Record

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NEWS IN BRIEF

CIVIL LIBERTIES BROADCAST

The Civil Liberties Seminar being sponsored by the Harvard Lawyers Guild is recording for broadcast over station WORL a series of round-table discussions. The programs are based on the material arising from the current seminar meetings on civil liberties. The first of these was broadcast on November 28, and the discussion centered around the topic "Constitutional Sources of Civil Liberties." Participants were Edward Montrose, 3L, who acted as Moderator; George Spiegel, 3L; John Carroll, 3L; William Suckle, 3L; and Fred Fisher, LL.B. '48.

Anyone wishing to participate in the radio round-table on any of the future Civil Liberties topics, should contact Edward Montrose, 50 Hastings Hall.

AVC CONVENTION

Among the 10 delegates of the Harvard Chapter of AVC, to the National Convention in Cleveland, Ohio, November 25-28, were Eastman Birkett, 3L, Chapter chairman; Leon Waks, 3L, Chapter vice-chairman; George Dysart, 3L, and Charles Thompson, 3L.

In addition to electing officers, the Convention adopted a broad program which recommended repeal of the Taft-Hartley Act, endorsed the President's Civil Rights program, urged the increase of Veteran subsistence allowances, applauded the Marshall Plan, and favored the original UN partition plan in Palestine. The Convention also confirmed the action of the National Planning Committee with respect to disciplinary measures taken against certain members for Communist affiliations and defiance of the national governing body's authority.

Members and friends of AVC will have the opportunity of cross-examining the delegates on the decisions pertaining to these issues at the Chapter meeting, tomorrow night at 7:30, in Phillips Brooks House.

LAWYERS GUILD SEMINAR

"Freedom of Religion, and Separation of Church and State," will be discussed by Professor Robert R. Bowie in the sixth Lawyers' Guild Civil Liberties Seminar to be held at 2 p. m. today in Langdell North.

HARVARD LAW REVIEW

The Harvard Law Review will be made available to newly graduated students at a reduced rate.

The cost of subscription has been set at \$3.75 for the first year, \$4.50 for the second year, and \$5.50 (the regular rate) for the third year after graduation.

This offer, which is being made for the first time, is available only to the members of the class of September, 1948, and subsequent classes.

AMES PRIZES

Prizes for the first round arguments of the first year were awarded to James M. Fletcher of the Ames-Gray Club for the best brief and to Haven E. Simmons of the Kaplan Club and Clarence C. Ferguson of the Taney Club for the best orals on December 2, 1948 in the courtroom. The prizes were a copy of Tracy's *A Successful Practice of Law*, Dean Pound's *The Spirit of the Common Law*, and Justice Holmes' *The Common Law*.

YEARBOOK PICTURES

Due to circumstances beyond the control of the yearbook committee, all individual photographs scheduled for this week will be cancelled. However, Law Club pictures will be taken as scheduled. The photographer will probably be available next week, and notice of further sittings will be promptly posted.

Campaign For Dormitories Is Planned Now

Committee of Griswold, Marsh, Bushby Head Drive On National Level

Dean Erwin Griswold has disclosed that the organization of the committee to conduct the fund-raising drive for the planned Graduate Center and Dormitories is proceeding very satisfactorily. National, state, district and local committees will provide the framework for soliciting funds from alumni.

The national committee is composed of John B. Marsh, Wilkie Bushby and Dean Griswold. Mr. Marsh, chairman of the committee, received his LL.B. in 1910 and until recently was president of the Law School Association of New York. The vice-chairman's position will be filled by Mr. Bushby who graduated from the Law School in 1921. In addition, there is an advisory committee made up of all the presidents of the Harvard Law School Associations, headed by Robert P. Patterson, LL.B. '15, former Secretary of War. This committee will assist throughout the campaign.

Approximately 60 state committees are being formed to act under the national committee. These include the District of Columbia, Hawaii, and two committees each for some of the larger states. Chairmen for these committees have already been selected and they are now in the process of forming the groups who are to work with them. The overall plan includes the organization of district committees by the state chairmen, in order to facilitate the drive on the local level.

The organization of the committees will be completed some time in January in order that the drive can begin in February and be concluded by Commencement in June. The pattern of operation is expected to include luncheon or dinner meetings between the district chairmen and the local committees to plan the campaign, and then dinner meetings for the local alumni to aid the actual solicitation of funds.

It is expected that the Law School faculty will participate in the campaign. (Continued on page four)

Dr. Moritz Discusses Death Investigations

Investigation of some 300,000 deaths per year in the United States is necessary, according to Dr. Moritz in his second lecture on law and medicine, of persons who have unexpectedly died from obscure causes or known or suspected violence. Such deaths are required by law in all jurisdictions to be reported to the county coroner or medical examiner for examination.

The scope of such laws varies from a broad type which requires any death from an obscure cause to be investigated to one which only covers a death where homicide is suspected. Generally the purpose behind such laws is to recognize all deaths from homicide, to relieve innocent persons from suspicion of crimes never committed or that they did not commit, and to discover unrecognized hazards to the public health.

At any point in the investigation, the medical examiner can close the case if he believes that death occurred from natural causes. Only one out of five of the deaths reported cannot be disposed of in this way. Where a homicide has occurred, this examination serves as the basis for the district attorney's investigation.

A competent medical examiner seeks to eliminate possibilities; could the death have been accidental, could it have been suicide? Superficial examination will not answer these questions since bruises and injuries on the body may have been caused as the person fell to the ground. (Continued on page four)

RECORD BOXES

The RECORD has boxes in Austin foyer and Langdell South for Letters to the Editor, and contributions to Off The Record.

Teaching Fellows To Aid Future First Year Groups

Present Third Year Classes Eligible For New Advisory Posts

Plans for a program of group work in the first year, to be staffed by Teaching Fellows, have been approved by the Law School faculty on recommendation of the Committee on Legal Education, Dean Erwin N. Griswold has announced.

To permit early enlistment of the staff, a meeting of all third year students who may be interested in applying for such posts will be held in Langdell South at 5 o'clock on Monday afternoon, December 13. At that time, Dean Griswold and Professor David F. Cavers, who will serve as Faculty Adviser to the Teaching Fellows, will explain their functions and the terms of employment in so far as these can be indicated at this time.

"The work of the Teaching Fellows will be such as to call for men with good scholastic records," Dean Griswold said. "However, it will also require men who have the personal qualities needed for effective leadership in planning and conducting group discussions and in advising individual students. Though grades are important, they will certainly not be all-important in our selection."

The program of first-year group work is designed to step up the effectiveness of the first-year student's performance in his course work, not to cover additional subject matter. Dean Griswold hopes that through it the first-year student will earlier get a better sense of direction and a better understanding of the basic processes of law which he is examining in his case study.

Meeting in groups of about 20, perhaps as frequently as once a week, the first-year students may, for example, first examine the records of cases selected to illustrate the processes of litigation. Then they may turn to a simple problem in counseling, based on materials in one of their casebooks.

As the year progresses, more difficult problems will be considered, in which (Continued on page four)



Left to right, Dean Erwin N. Griswold, Hon. Augustus N. Hand, and Robert P. Patterson, pictured at recent fund-raising dinner.

Ilse Koch Life Sentence Recommended; Army Board's Viewpoint Criticized

By STANLEY BENSON GOMBERG, 3L
(This is the second and concluding article of a series concerning the much publicized Ilse Koch case, in which the so-called "Bitch of Buchenwald," alleged collector of human skin, was sentenced to life imprisonment. Her sentence was subsequently commuted by the Army to four years, and the resulting protest has led to Congressional investigation and reportedly a review by President Truman.—Ed. Note.)

In the thousands of words written in the United States press concerning the Ilse Koch case, words both violently critical and strongly favoring the Army's decision to commute her life sentence to four years, the most decisive issue involved has not been mentioned. This concerns the question of whether the Army reviewing officers exercised, in their examination of the record, a proper scope of review. It is presumably the aim of the Army's critics that the life sentence be reinstated, that the reduction of the sentence to four years be reversed. Review of these Army trials is automatic but without benefit of briefs or oral argument. Assuming, as must here be assumed, that the reviewing officers' motives were beyond reproach, the only adequate basis for reversal is that either there was an improper examination of the evidence in the record or that the drastic reduction of sentence was an abuse of discretion.

The question is immediately raised as to the proper scope of review. An exami-

nation of the Koch case quickly reveals this to be the most perplexing aspect of the matter.

William Dowdell Denson (LL.B. '37), chief Army prosecutor of Ilse Koch at the Dachau trials, has become now the Army's principal critic. Legal counsel to the Atomic Energy Commission, Mr. Denson, as Army prosecutor tried a total of 177 Germans, and frequently acted as a reviewing officer. In a letter to the RECORD, Denson writes, "The correct scope of review in my opinion and in the opinion of other persons who acted as reviewers, was that the findings of the trial court were not to be disturbed provided there was sufficient evidence, if believed by that court, to sustain the findings." He also made it clear that there is, oddly, no official statement of the scope of review of the Dachau trials.

It is apparent now, from the October 21 Army press release, quoting General Clay, that the reviewers "go over all the evidence and examine the credibility of (Continued on page three)

New Alumni Group Forms in Oklahoma

A Harvard Law School Alumni Association for the State of Oklahoma was founded on November 19, 1948, in Tulsa, Oklahoma, when 19 alumni gathered at a breakfast and formed the nucleus for the organization.

The group voted unanimously to affiliate with the parent Harvard Law School Alumni Association, and elected as its officers, Thomas E. Bennett, LL.B. '48, President; David Loeffler, LL.B. '48, Secretary-Treasurer; and R. Dale Vliet, LL.M. '46, Representative on the Council of the Harvard Law School Association. Mr. Vliet is a Professor of Law at the University of Oklahoma.

The Association plans to have its first annual meeting at the State Bar Association Convention next fall, at which time the officers will have ready a formal constitution to be adopted by the members. The membership has already grown to 26, and an extensive membership drive is planned within the next few months.

In a letter to the Treasurer of the Alumni Association, the group expressed a desire to assist with the activities of the parent organization and the Law School in general. It has already appointed two placement representatives for Oklahoma, one in Oklahoma City and the other in Tulsa.

Student Board Names Ames Clubs Winning Quarter Final Berths

The Board of Student Advisers has announced qualifying round winners in the Ames Competition. Three second year clubs, Cardozo, Frankfurter, and Pitney won all four of their arguments. The Mansfield Club won three and tied one, while the remaining qualifying clubs had three victories and one defeat. They are the Casner, Powell, Taney, and Morgan Clubs. Several other clubs also had a record of 3-1. The winning clubs are rated on the basis of their won-lost ratio, and in case of ties, on the overall average score received by the club members in their arguments. Of the 41 clubs which took part in the qualifying round, only two lost all four of their arguments, and one club lost three arguments and tied in the fourth.

Of the eight clubs which qualified, only the Frankfurter and Mansfield Clubs are newcomers to the list of clubs which have qualified since the Ames Competition was revived at the end of the War. The Casner and Morgan Clubs have qualified twice previously, and the remaining clubs once in the five qualifying rounds since the summer term of 1946. None of the qualifying clubs has won the final round during this period, although the Taney and Pitney Clubs have reached the final round, in the spring term of 1947, and this term, respectively.

The qualifying clubs will take part in the quarter-final round to be held in the spring term.

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Editorials

The announcement of a plan for group work in the first year to be staffed by Teaching Fellows is easily one of the most significant developments in the post-war program at the Harvard Law School.

The advantages of the plan are many. Any third-year student who has taken a seminar course will recognize the invaluable training that can be gained from working in small groups. With the new program small groups of first-year men will be able to receive such training under the supervision of a Teaching Fellow.

The correlation of courses, practice examinations, an advisor to guide the new man over some of his problems—all of these have long been recognized as desirable objectives. The realization of these objectives now appears close at hand.

For the Teaching Fellows the program offers an opportunity to launch a teaching career by gaining experience at an institution long a leader in the field.

The Committee on Legal Education and the faculty have taken a commendable step forward.
J. S.

Off the Record

FAILURE OF CONSIDERATION

As noted in a current issue of *Time*, the voters of Lawrence County, Ill. had elected Phillip Benefiel to the position of State's Attorney only to learn that he had flunked his bar exams the month before.

MAJOR LEAGUE SWAP

The Juristic Society and Caveat Club of Philadelphia gave a large dinner at the Philadelphia Cricket Club for a member who was leaving a local firm to join a firm in Pittsburgh. In the dinner announcement it was reported that the local team was to receive in exchange from the Smokey City Club in the deal: 1. A rookie trial lawyer who came up from Punxsutawney (a farm league) last year, a sucker for a fast breaking nonsuit. 2. A slugging brief writer temporarily in a batting slump. 3. A corporate-securities expert whose knuckle ball no longer fools the SEC. 4. Eighty-four bucks in cash.

ODE TO FAIR RADCLIFFE

To these staid Halls, enriched with lore
From scholars' cogitations,
And kept in deep-red bricks and greens
By non-taxable Foundations,

Come, gentle maidens, from afar
And finish off your learning,
And study Freud, Commiserate
With other people's yearning.

Enrich your souls with noble thoughts
And hearts with altruism,
So that o'er cocktails meant for two
You can talk Existentialism.

Oh, daughters of the Pioneers,
Learn here the latest fashions,
Emerge to meet our world with grace
And primly disciplined passions.

P. B.

Gallery

HAROLD J. BERMAN
Visiting Professor



Those alumni and students who wonder how a course like "Comparison of Soviet and American Law" ever was placed on the Law School curriculum might feel reassured if they met its instructor, Visiting Professor Harold J. Berman.

Professor Berman is one of those youthful faculty members who is readily mistaken for one of the students. At the age of 30 years, his is a well known name to the rapidly growing number of lawyers, businessmen, and students interested in various aspects of the Soviet law.

When he was graduated from Dartmouth in 1938, Professor Berman had no interest in Russian affairs at all. Indeed, his initial plunge into this field was not made until several years later, when under the impact of the World War, he suddenly became aware of this completely vacant gap in his previous education. By this time, however, he had acquired an extensive background in legal history under Plucknett and Tawney at the London School of Economics, where he spent a year. Returning to this country, he worked for a year in the graduate history department, under Professor Woodbine, for which he later received an M.A.

The next three years with the Signal Intelligence Corps in the European Theatre gave him an opportunity to meet many Soviet citizens, especially in the displaced persons camps, and his interest in Russian life increased together with his command of the Russian language. After his discharge in 1945, he resumed studies at the Yale Law School where, under the flexible curriculum, he pursued a unique but intensive study of Soviet law, in addition to the regular course. His work culminated in a series of theses which formed the basis for subsequent law review articles. Upon receipt of his LL.B. (cum laude) in 1947, he was appointed to an Assistant Professorship at Stanford Law School, to which he is still attached as an Associate Professor on leave of absence.

At present, Professor Berman in addition to his law school post at Harvard, teaches a course in "Soviet State and Law" at Littauer School of Public Administration and is a Research Associate at the Russian Research Center. He is aware of the limitation of not having engaged in some legal practice prior to teaching, but philosophically notes that there weren't too many opportunities to practice Soviet Law at that time. In a course not uncommonly approached with feelings colored by the student's attitude toward the "Russian situation," he has managed to impart a high degree of clarity and objectivity to class discussions. In developing an interest in the study of Soviet Law among students, he has fulfilled one of his purposes in coming to Harvard.

The Comparative Law course is a decisive step toward a greater co-ordination of law studies with the rest of the university curriculum and seems desirable to counteract the limitations of excessive departmentalization. This is even more apparent in the course which Mr. Berman will give in the spring term, dealing with the other high point of his studies, the comparative-historical method. This method of analyzing legal institutions concentrates on the problems of change and continuity in a developing legal system, as compared with other and different legal systems. Professor Berman feels that considerable insight can be gained into American legal problems if they are viewed in a historical and comparative perspective with other systems of law.

Although he takes his Russian Law seriously, and assigns it great importance in the context of the international situation, he is somewhat reluctant to make any comments on the Soviet Union beyond the immediate field which he teaches. He does feel that the Soviet legal

system offers too important a challenge to the Anglo-American system to be lightly brushed off, and feels further that there may be many opportunities open in law and business in the immediate future for Americans trained in the Soviet law and language. He was amazed after the war to find that only a few people in this country knew anything about Soviet legal institutions, and he suggests that training in this field might best be given in courses co-ordinated with the rest of the university, rather than separately in law school. The acute need, today, in his opinion, is to maintain and broaden existing channels of communication between the Soviet Union and America, and cites as an encouraging sign the flow of legal treatises and case reports coming in from the U.S.S.R. "Professor Berman did venture to remark that "While understanding the Russians is no guarantee of peace, there can be no peace without such an understanding."

Mr. Berman believes that the popular view of the Soviet regime as a police state run by a gang of thugs is a dangerous misconception. Even from a chauvinist point of view, it means that the inner strength of the enemy is seriously underrated.

From the standpoint of a creative peace, it means that possible avenues of reconciliation between conflicting systems are cut off. From the standpoint of our own development, it means that we learn nothing from Soviet experience, profiting neither from its blunders nor from its excesses.

J. W.

Sub Judice

SPARE THE POOR PUBLIC

The Marine Corps Vets Foundation had as its aim the promotion of comradeship among former Marines and the assistance of their widows and orphans in financial straits. In denying their application for a certificate of incorporation, the Court pointed out that there were a number of competent veterans' organizations already in the field, who are capable of attaining these same purposes, and

"Obviously, to attain some of the proposed ends on any reasonable scale, resort will be had to the public for funds. There are already too many fund-seeking organizations. There should be a reasonable limit to all things." *In re Marine Corps Vets Foundation Inc.*: 79 N.Y.S. 2d 18 (1948).

Alumni Notes

Two hundred and thirty-five of the 365 men who received their law degree in June, 1948, have reported on their present activity and location as follows:

Richard O. Aldrich, Tyler & Reynolds, 1 Court Street, Boston, Mass.; Donald C. Alexander, Covington, Burling, Rublee, Acheson & Shorb, 1701 Union Trust Bldg., Wash. D. C.; John R. Alexander, Offices of Albert Michelson, 235 Montgomery St., San Francisco, Calif.; Charles M. Allen, Fish, Richardson & Neave, 20 Exchange Pl., N. Y. C.; Harry H. Almond, Jr., Davis, Hoxie & Faithful, 20 Pine St., N. Y. C.; David M. Amberg, Butterfield, Amberg, Law & Buchen, 500 Michigan Trust Bldg., Grand Rapids, Mich.; Mac Asbill, Jr., Clerk to Mr. Justice Reed, U. S. Supreme Ct., Washington, D. C.; Robert B. Atkinson, Mass. Mutual Life Ins. Co., Gen. Counsel's Office, Springfield, Mass.

James A. Avery, Reilly, Roberts, McLouth & Dicker, Rochester, N. Y.; Bernard Axelrad, J. Arthur Greenfield, Los Angeles, Calif.; Thomas N. Bantivoglio, Boyle & Archer, Broadway & Cooper Sts., Camden, New Jersey; Joseph Barbash, Clerk to Judge Learned Hand, C. A. 2nd., N. Y. C.; Erwin W. Barkan, Mayer & Mayer, 83 S. High St., Columbus, Ohio; Bourne Bean, Cobbs, Logan, Roos & Armstrong, 506 Olive St., St. Louis, Mo.; Walter C. Beardsley, Stubbsman, McRae & Sealy, Petroleum Bldg., Midland, Texas; Thomas M. Beckley, Stinchfield, MacKall, Crousse & Moore, Minneapolis, Minn.

Duane B. Beeson, Clerk to Judge Orr, 9th Circuit, U. S. Court of Appeals, San Francisco, Calif.; Joseph R. Beever, Ohio Code Revision Commission, State House, Columbus, Ohio; Ralph F. Berlow, Austin F. Canfield, 637 Woodward Bldg., Washington, D. C.; Elihu H. Berman, Ribocoff & Ribocoff, 50 Lewis St., Hartford, Conn.; John Bingham, Martin, Turner & McWhorter, 600 N. 18th St., Birmingham, Ala.; Benjamin L. Bird, Navy Dept., 18th & Const. Ave., Washington, D. C.; Gordon F. Bloom, Foley, Hoag & Eliot, 10 Post Office Sq., Boston, Mass.; George T. Bogert, Hopkins, Sutter, Halls, DeWolfe & Owan, 1 N. LaSalle St., Chicago, Ill.

Gerald Bouvier, Root, Ballantine, Harlan, Bushby & Palmer, N. Y. C.; Januar D. Bove, Jr., Law Offices of Wm. H. Foulk, 228 Delaware Trust Bldg., Wilmington, Del.; James A. Bowen, Office of Karl F. Steinmann, 510 Tower Bldg., Baltimore, Maryland; Joseph M. Boychuk, Men-

des & Mount, 27 William St., N. Y. C.; Thomas E. Braswell, Jr., Office of Alien Property Custodian, Washington, D. C.; Kingman Brewster, Jr., M.I.T. Research Associate Dept. of Industrial Economics, Cambridge, Mass.; Charles S. Bridge, Landis, Ferguson, Bieser & Greer, 11 W. Monument Bldg., Dayton, Ohio; Jack E. Bronston, Bandler, Brady, Haas & Kaas, 11 Broadway, N. Y. C.

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Francis D. Cochran, Debevoise, Plimpton & McLean, N. Y. C.; William E. Collins, Thompson, Knight, Harris, Wright & Weisberg, Republic Bank Bldg., Dallas, Tex.; Norman W. Colquhoun, Thompson, Hine & Flory, 1122 Guardian Bldg., Cleveland, Ohio; John M. Couture, Own Practice, 262 W. Broadway, Waukegan, Wisc.; William G. Craig, King & Flourmy, Ohio Valley Bank Bldg., Henderson, Ky.; John F. Crane, Chambers of Judge T. F. Meaney, U. S. Dist. Ct., Newark, New Jersey; Clinton T. Crotius, Tillinghast, Collins & Tanner, 15 Westminster St., Providence, R. I.; C. Jackson Cromer, Gatch, Kleinmann, Roberts & Kuhn, 1421 Union Central Bldg., Cincinnati, Ohio.

James A. Crotty, Jr., Vaughn, Esty, Crotty & Mason, 332 Main St., Worcester, Mass.; Roger A. Cunningham, Nutter, McClennan & Fish, 220 Devonshire St., Boston, Mass.; Milton A. Darling, Ford Motor Co., Labor Relations Dept., Dearborn, Mich.; Nelson J. Darling, Jr., Ropes, Gray, Coolidge & Rugg, 50 Federal St., Boston, Mass.; Frank I. Davis, Jr., Donovan, Leisure, Newton, Lumbard & Irvine, N. Y. C.; John F. Davis, Emmert, James, Needham & Lundgren, Des Moines, Iowa; Robert S. Davis, Edwards & Angell, 15 Westminster St., Providence, R. I.; Roger A. Derby, Jr., Simpson, Thacher & Bartlett, N. Y. C.

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Leonard H. Farmer, Jr., Welles, Kelsey, Fuller, Cobourn & Harrington, Ohio Building, Toledo, Ohio; William V. Finn, Ragland, Dixon & Murphy, St. Paul Bldg., Cincinnati, Ohio; Francis T. Finnegan, Manufacturers & Traders Trust Co., Buffalo, N. Y.; Frederick G. Fisher, Jr., Hale & Dorr, 60 State St., Boston, Mass.; George E. Flather, Gordon Wade Rule, 427 Union Trust Bldg., Washington, D. C.; Newton H. Fletcher, Milbank, Tweed, Hope & Hadley, N. Y. C.; Robert M. Forrister, Provident Trust Co., Philadelphia, Pa.; John F. Forsyth, Nixon, Hargrave, Middleton & Devans, Rochester, N. Y.

Peter L. Fulvio, N. Y. State College for Teachers, Albany, N. Y.; Guy G. Gabrielson, Jr., Guy G. Gabrielson, 70 Pine St., N. Y. C.; Richard H. Garner, Root, Ballantine, Harlan, Bushby & Palmer, N. Y. C.; Armand Gilinsky, Offices of Sol Rosenblatt, 630 5th Ave., N. Y. C.; George C. Gillette, Paul D. Iverson, 215 W. 6th St., Los Angeles, Calif.; Morris Goldschlager, Oseass, Pepper & Siegel, 55 Liberty St., N. Y. C.; William Gorvine, Clerk, Mass. Supreme Judicial Ct., Boston, Mass.; Robert F. Grabb, Ingersoll-Rand Co., Legal Dept., Philipsburg, New Jersey.

Robert R. Gray, Sage, Gray, Todd & Sims, N. Y. C.; Alfred W. Green, Austin, Wilhelm & Carlson, 120 Broadway, N. Y. C.; Kenyon W. Greene, Bronson, Lewis, Bronson & Upson, Waterbury, Conn.; Frank H. Griffin, Jr., Barnes, Dechert, Price & Smith, Packard Bldg., Phila., Pa.; John E. D. Grunow, Newmont Mining Corp., 14 Wall St., N. Y. C.; Sidney M. Gunther, McConnell, Lutkin & VanHook, 134 S. LaSalle St., Chicago, Ill.; Sheldon B. Guren, Gottfried & Ginsburgh, Hippodrome Bldg., Cleveland, Ohio; Hans G. Hachmann, Peaslee, Brigham, Albrecht & McMahon, 501 Fifth Ave., N. Y. C.

(This List will be concluded in the next issue.)

ILSE KOCH—(Continued)

the witnesses, not only from the evidence that is presented in (the particular) case, but in many cases the same witness has appeared (in) time and time again."

To this, Denson wrote, "The position the Army has taken . . . is a radical departure from the verbal instructions that were given when we review cases . . . (and) constitutes an unlawful invasion of the province of the trial court."

It seems clear that if Denson could be shown to be correct, this would persuasively argue for a new review of the case. There are obstacles. The proper scope of review for the past cases has been in a real sense only what the Army determined it to be as it went along. There is no "law" on the subject. One critical of the Army can point to little else to support his view than what Denson says was, in his experience, unquestioned practice. In the face of General Clay's pronouncement, as Commander of the European Theater, it would seem to have little weight. Only in Washington may these obstacles be overcome.

The Evidence

Whichever was the proper scope of review, it is necessary to know the evidence by which the verdict is to be supported. The much publicized position of the Army has been, to quote from *The New York Herald Tribune*, October 13, "If you do not believe us to be correct, then look at the record and judge for yourselves." An attempt to that end resulted in a curt letter from the Army that

there were but two records of the case, one in Europe and another in Washington "for official use."

However, communication with William Denson, chief prosecutor at the trial, George McDonough, formerly a member of the office of the Deputy Judge Advocate for War Crimes, Judge LeRoy Van Roden, of the Simpson Commission, and Senators Leverett Saltonstall and Raymond Baldwin, and reports of newsmen who were permitted by the Army to read the record has been helpful, both in procedural and evidentiary matters.

It may be stated at the outset that there is comparatively little evidence in the record to support the most publicized charge against Frau Koch, that of ordering the execution of prisoners in order to collect their human skin. The record reveals that no witness ever testified that she ordered prisoners with tattooed skin executed. Herbert Froboess, Kurt Tietz, one Biermann and Dr. Eugene Kogan, editor of the monthly *Frankfurter Hefte*, all former inmates, testified only as to having seen human skin with a tattoo mark, which some of them recognized as being that of a former prisoner, in the camp laboratory and later in Frau Koch's home. This was the extent of such evidence.

Ilse Koch, however, was not tried for sadistic skin collection, but more precisely her indictment read, "while acting in pursuance of the common design Frau Koch . . . 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. . . ."

The evidence made it clear that as wife of the Commandant of the Buchenwald Concentration Camp from the start of the war, in 1939, to 1945, at which time her husband was executed by the Nazis for embezzlement, and from that time to the time of her arrest by American officials, when she was a camp warden, she actively participated in the administration of the camp.

As for further testimony prosecutor Denson reports that prosecution witness Boroz, Gehm, Froboess, and Blanck, testified concerning a beating inflicted by Ilse Koch. Witness Kronfelder testified

to a beating that he himself received from Ilse Koch, as did Tietz, who also testified as to Koch's severe maltreatment of himself. Dr. Kogan and witnesses Schilling and Lowenstein testified that she had reported prisoners who were subsequently beaten. Only these 10 witnesses were presented by the prosecution. All 10 have here been mentioned.

On cross-examination, defense witness Morgan (former member of the S.S.) testified, to quote Denson, . . . "that from his investigation of her activities he was of the opinion that she had caused the death of many prisoners, but because of the press of time he was unable to substantiate with facts." Denson, probably feeling that his case was won, did not realize how valuable that expenditure of time might have been. He has consequently been subjected to criticism in the press, based on a supposed inadequacy of the prosecution's presentation.

Mr. Denson stated in a letter to the *New York Times* that an additional reason for his tactic of limiting his number of witnesses was in order that he would not "over-emphasize her conduct." This may be open to undue criticism. According to Professor Benjamin Kaplan of the Harvard Law School, who acted as a prosecutor at the Nuremberg trials, the problem Mr. Denson was alluding to was a very real one in war crimes prosecutions. Some of the crimes involved were so heinous and of such great proportions that a war crimes prosecutor was often faced with the problem of whether to limit the evidence he adduced concerning certain of the accused so that another defendant in the same trial who had been responsible for relatively few deaths would not appear virtually innocent by comparison.

Nonetheless, this, and this alone, is the evidence which must support the verdict, if the commutation of Frau Koch's life sentence to four years is to be overthrown. Whether President Truman, as final reviewing officer, may take something akin to judicial notice of the horrible camp conditions, and then, from what was proved at the trial as to the extent of Koch's authority at Buchenwald, decide as a matter of law that the commutation was unjustified, is indeed another matter.

Army's Position

Undoubtedly, argument favoring the Army's position that the reduction of Ilse Koch's sentence should be final may be persuasively presented and is not to be taken lightly. Without precedent, the Army was given a large and important job to do immediately after occupation of Germany. Essentially, it used Army Court Martial Procedure to govern the trials, this being the procedure with which it was most familiar. The time factor loomed into importance, because of the large number of defendants, and an attempt to conform to the American concept of a speedy trial.

In court martial procedure there is a very definite need for a method of review wherein the Reviewing Officer examines all of the evidence presented to the court, even to the extent of weighing the credibility of the witnesses. Frequently the judges in such trials are not normally engaged in a judicial capacity and the experiences of the Army has been that a full examination of the record is necessary. This examination has been made in its due course, and the official response to the reviewing authorities' recommendations has followed, also in due course. It is to be argued further

that it is impossible to decide this case emotionally, simply because it is the feeling of some that for matters extraneous to the record Ilse Koch should have been given a greater punishment.

The most forceful argument that may be presented for the Army is one for stability and repose. It is to be remembered that the Ilse Koch case was one of perhaps thousands. Clearly, her case cannot be disposed of without regard to that fact. The procedure used by the Army, including the exercise of the scope of review, was on the whole adequate. There was no past law to govern the amount of sentence to be imposed. This was necessarily a matter of discretion. An overturning of the Ilse Koch decision would mean, the Army might argue, an over-

turning of the entire system. The consideration given to Frau Koch must be given to all the German accused.

Critics' Argument

What then of the Army's critics? On what grounds might President Truman or his legal advisers be persuaded?

Although it is true that this case cannot be decided without regard to the fact that it is but one case of many disposed of under similar procedure, nonetheless it is important to place the matter in its proper aspect. That aspect is political, as well as legal. The war crimes trials were new trials the purpose of which was not only retributive but also and perhaps more important, educational. Our country has for the past three years ex-

(Continued on page four)

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Calendar

LEGAL WORLD

Soviet Law

The Law School Forum will present the second and third lectures on *The Spirit of Soviet Law* by Harold J. Ber- man, Visiting Professor from Stanford University, at the New Lecture Hall at 8 p. m., tomorrow and next Monday, December 9 and 13. Free to the public.

Story Club

The Story Club will hold its annual Christmas Banquet tomorrow evening at seven o'clock at Lincoln's Inn.

Law Wives

The law wives present a Helena Rubinstein representative who will speak on *Complexion, Care, Hairdo and Figure* at Kendall House tonight at 8 o'clock.

King's Bench

The King's Bench Winter Formal will be held in Boston next Saturday, December 11, at the University Club, 426 Stuart Street, from 8 p. m. till midnight. Music will be provided by Bob Norris and his orchestra.

Law School Formal

The Law School Committee presents *Cue for Christmas*, the holiday formal, next Friday, December 10 between 9 p. m. and 1 a. m. at the University Club, Boston. The tickets will be limited to insure tables to all. They are on sale at Gannett House for \$2.40.

UNIVERSITY WORLD

The first annual dinner of the class of 1947 of Harvard College will be held on Thursday evening, Dec. 9th, at the Hasty Pudding Club, 12 Holyoke St., Cambridge. Gather at 7:00 P. M., dinner served at 8:00. Movies of 1948 Harvard-Yale football game will be shown after dinner. Price of roast beef dinner, \$2.35. Dress informal.

DORM FUND—(Con't)

Dean Griswold spoke before a dinner in New York on November 9 to open the organization of the drive, and Professor Morgan participated in the same type of organizational dinner in Chicago last week. Professor Chafee is scheduled for a visit to the West Coast on January 7. No definite plans have been disclosed as to possible speaking engagements for other members of the faculty.

TEACHING—(Con't)

questions drawn from materials in two or more courses will be interwoven. The pace will not be hurried, and emphasis will be placed on developing the individual capacities of the participants.

This group work will differ from the first-year individual writing program supervised by teaching fellows at the University of Chicago and some other law schools. At Harvard, continued reliance will be placed on the Ames Competition as the principal vehicle for first-year student research and writing.

Plans to carry out the recommendations of the Committee on Legal Education will be developed by Professor Carvers and a committee of first-year course teachers, aided by the Teaching Fellows enlisted at this time.

The Teaching Fellows will number five or six men drawn from the classes graduating in February and June and from other recent graduates of the school. Although appointments will be for one year, it is hoped that renewals of appointments will be possible in some cases to give greater continuity to the work in the succeeding year.

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MORITZ—(Continued)

while an apparent absence of such marks does not rule out a concealed injury, a blunt injury which did not leave any skin marks, or poisoning.

Further investigation, in cases of homicide, can produce evidence to identify the remains, establish the time of death and special circumstances such as where the crime was committed. Where a plea of self-defense is entered, medical evidence can reveal the sequence in which the wounds were struck and whether the victim was intoxicated at the time of the struggle.

Dr. Moritz will deliver the third in this series of lectures, entitled "The Strength and Weakness of Scientific Evidence with Particular Reference to Proof of Homicide," this afternoon at 5 p. m. in Langdell North Middle.

ILSE KOCH—(Continued)

erted great efforts to instill in the German people a respect for America. In no small sense our entire foreign policy at the present time is hinged on this political experiment. One may not dismiss lightly the biting *New York Times* editorial of September 30 which concluded: "If someone had deliberately planned to sabotage the United States' standing in Germany and in the world he could not have picked a better subject with which to do it than the case of Ilse Koch. Some way, somehow, this stupid error should be corrected. . . ."

This is not to say that Ilse Koch is to be sacrificed to political expediency. It is to say, however, that if there remains a doubt that justice has been done, and if there remains a legal means by which justice may be achieved, then we cannot afford to indulge in the luxury of finality.

The problem of the proper scope of review that should have been exercised is perhaps the most important aspect of the Ilse Koch case as it now stands, for if the reviewing officers misapprehended the nature of their powers the case should be returned to the European Theater for a review on a proper basis. It is clear that the Army reviewers took it upon themselves to weigh the credibility of the witnesses. At best the advisability of such procedure is to be doubted. The trial court before whom the witnesses were presented was in a better position to evaluate the weight of their testimony than was a reviewing officer whose only official knowledge of the trial came from the black and white of the record. It is the position of the Army that this is the standard order of court martial procedure, but the fact remains that these were not courts martial. The proper procedure for these cases has never been defined by high authority.

Judicial Notice

The disputation of the Army's critics, however, need not be based solely on a consideration of what powers the reviewing officers exercised that would wisely not have been exercised. More forceful argument arises from the fact that powers of the reviewing officers that should have been employed were ignored. On analysis it becomes clear that only as to matters of evidence were the reviewing authorities confined to the record. But these are not the only matters to be taken into consideration. Certain facts have been established beyond question. The reviewing officers could not ignore that by the end of the war 5000 persons each month were being murdered at Buchenwald. The reviewing officers could not ignore the terrible

facts portrayed in the Army's own film *Let Us Forget*, described by Carl Levin on October 13 in *The New York Herald Tribune*.

These are not merely matters of evidence to be sought for in the record, and dismissed from consideration if not found there. These are basic facts of which judicial notice should have been taken by the reviewing authorities.

Following then in this connection it is to be remembered what the record did show. From 1938 to 1945 Ilse Koch was the wife of the commandant of the Buchenwald Camp. It was established that she exercised an important position in the camp's administration. Of this there is no question. All of the witnesses testified as to the power which she exercised, including Dr. Morgan, witness for the defense. It is not important that the evidence did not establish her close connection to the human skin collection; it is important that in the evidence Frau Koch appears as one of the leaders in the camp, actively participating in and completely accepting what occurred there. This leadership must, as a matter of law, measure her responsibility. The responsibility involved is not only for the accounts of the beatings that appeared in evidence, but for the thousands of murders to be judicially noticed that were

perpetrated at Buchenwald. It offends one's moral sense that a four-year sentence should be the United States' measure of accountability for such a crime.

BULLETIN

A commentator, speaking for the Senate Investigating Committee, said that the committee has found what they believe to be errors in the Army Review Board's actions, according to an Associated Press release from Washington, D. C., dated December 3rd. Said the commentator, "We believe this might be sufficient grounds for General Lucius D. Clay, Military Governor in Germany, to reimpose the life sentence." The committee's report is not yet completed.

It is on this basis, it is to be argued, that President Truman, as Commander-in-Chief of the Army, should order a new review. Indeed, on this basis, the life sentence pronounced by the trial court may well be reinstated.

These are, in general, the arguments that may be offered by the critics of the Army's decision to reduce Ilse Koch's sentence to four years. If Ilse Koch walks free at Dachau in 1949, these arguments may arise again in the minds of a Germany now torn between East and West at a trial in which the United States is defendant.

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