

Katherine B. Fite: The Leading Female Lawyer at London & Nuremberg, 1945

John Q. Barrett*

It is an honor to be in the company of so many leaders who are dedicating their professional energies and lives to the pursuit of justice globally. It is particularly an honor to be here with former Nuremberg prosecutor H.W. William Caming, as it was last evening when he spoke at the Robert H. Jackson Center. Bill Caming is a friend and an inspiration—he personifies the generation that started this work in the modern era and achieved so much of what undergirds international law and justice today.

Three other Nuremberg prosecutors and pioneers were part of this conference one year ago: Benjamin

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Ferencz, Whitney Harris, and Henry King. Ben continues to fight for international justice, particularly the definition of, and enforcement against, the international crime of waging aggressive war. Whitney, who now is ninety-seven years old, wanted to be with us today but is attending to his health at his home in St. Louis. When I spoke to him two days ago, he said to tell his friends here that he sends his regards, and that he is doing the best he can. Because Whitney Harris's best has always been a very high level of achievement, his message was and is very heartening, and I know that we all wish him well. Henry King, a dear friend to all of us and to the pursuit of justice, no longer can be with us, but his example and his spirit, alive particularly in our memories of his very powerful valedictory address at last year's Dialogs, will be with us always.¹

I have the unusual burden, as the opening speaker this morning, to follow Elvis Costello, the brilliant composer, musician, and performer of our age, to a Chautauqua Institution stage—on Saturday evening, Elvis and his band, The Sugarcanes, performing in Chautauqua's historic Amphitheater (which he described as a "wooden tent down by the Lake"), closed the Chautauqua summer season with an incredible show.

¹ See John Q. Barrett, Whitney R. Harris, Henry T. King, Jr., & Benjamin B. Ferencz, *Nuremberg and Genocide: Historical Perspectives*, PROCEEDINGS OF THE SECOND INTERNATIONAL HUMANITARIAN LAW DIALOGS 9-54 (American Society of International Law, Studies in Transnational Legal Policy No. 40, Elizabeth Andersen & David M. Crane, eds., 2009).

Luckily, Bill Caming at the Jackson Center last evening was an intervening presenter. But that only means that I now have two very hard acts to follow. My mention of Elvis Costello is not, however, merely for humor. As he finished his final encore song—his anthem—on Saturday night, it struck me that it asks a question that is at the heart of committed efforts in the realm of international humanitarian law: “What’s so funny ‘bout peace, love and understanding?”²

In the people who I have mentioned thus far, there was a common characteristic. It also was present as President Franklin D. Roosevelt worked in 1940 and 1941 with his Attorney General, Robert H. Jackson, and with other administration officials, legislators, and military officers to build the preparedness of the United States, to send support to Great Britain as she stood alone against Nazi attacks, and to respond in other ways to German military aggression that the United States regarded as violative of international law.³ This characteristic was present as well when President Harry S. Truman, less than two weeks after FDR’s death, asked Robert Jackson, by then almost four years an Associate Justice on the Supreme Court of the United States, to become the United States Chief of Counsel for

² ELVIS COSTELLO & THE ATTRACTIONS, (WHAT’S SO FUNNY ‘BOUT) PEACE, LOVE AND UNDERSTANDING? (Eden Studios 1978).

³ See generally ROBERT H. JACKSON, THAT MAN: AN INSIDER’S PORTRAIT OF FRANKLIN D. ROOSEVELT (John Q. Barrett, ed., 2003).

what became the prosecutions at Nuremberg of the senior surviving Nazi leaders.⁴

This characteristic also was visible in London during the summer of 1945, where Allied leaders and their staffs met, negotiated, and reached the agreement that led to the international trial at Nuremberg. On August 8, 1945, Soviet representative General I.T. Nikitchenko, British Lord Chancellor William Jowitt, Justice Jackson, and the French representative, Robert Falco, signed the agreement creating a new international court, defining the crimes that were within its jurisdiction and setting up procedures by which it would conduct its proceedings.

In relatively short order, the Allies selected Nuremberg as the trial site. They appointed judges to the new court, the International Military Tribunal (IMT). They wrote and filed an indictment charging twenty-four principal Nazis plus leading Nazi organizations with conspiracy, crimes against peace, war crimes, and crimes against humanity. Starting in November 1945, the Allies pursued a new kind of criminal justice: the international Nuremberg trial. Thereafter, the United States continued to prosecute Nazi war criminals in Nuremberg, which was located in the American zone of military occupation. Twelve subsequent American tribunal proceedings occurred between 1946 and 1949. The last, and the most complicated, was *The Ministries Case* that lasted from

⁴ See *The President's News Conference of May 2, 1945*, in PUBLIC PAPERS OF THE PRESIDENTS: HARRY S. TRUMAN 32, 34 (1945).

1947 until 1949, in which William Caming was a leading prosecutor.⁵

The international trial that began in Nuremberg in November 1945 featured a principal judge and an assistant from each of the four nations. The prosecutors who sat at the United States table during the next year included Justice Jackson and, at various times, his assistants Sidney S. Alderman, Robert G. Storey, John Harlan Amen, Telford Taylor, Thomas J. Dodd, Whitney R. Harris, and Jackson's own son William E. Jackson, his father's executive assistant. The twenty defendants who were physically present in the dock during the trial included Hermann Goering, Rudolf Hess, Joachim von Ribbentrop, Wilhelm Keitel, Albert Speer, and Haljmar Schacht.

* * *

At this point, I hope that you have noticed the common characteristic—the biology—that pervades my historical account: not one woman. That is a good thing as to the Nuremberg defendants—congratulations to the women of Germany who were not the leading perpetrators of Nazism and its crimes. But as to the rest of this leading moment in modern history, it was a man's undertaking in a man's world....

⁵ See XII, XII & XIV TRIALS OF WAR CRIMINALS BEFORE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW No. 10.

With one leading exception. Of course numerous women were involved, for good and otherwise, in the Roosevelt administration, Nazi Germany, the World War II alliance, the London Conference, and Nuremberg. In terms of the legal undertaking that was Nuremberg, however, only one female attorney participated, significantly and from the beginning, in the London negotiations, the pretrial work, and the commencement of the International Military Tribunal proceedings at Nuremberg.⁶

Her name was Katherine Boardman Fite. Born in Boston, Katherine Fite was forty years old at Nuremberg. She was raised in Connecticut and New York. She graduated from Vassar College (A.B., 1926), where her father chaired the political science department. Fite then attended Yale Law School, with scholarship assistance during her second and third years from *Kappa Beta Pi*, the legal sorority dedicated to high professional standards among women law students and lawyers. In 1930, she was one of only four women in her law school graduating class of seventy-six. From 1930 until 1934, Fite was an attorney in private practice in New York City. She then moved to Washington and worked for

⁶ Two other attorneys, Harriet Zetterberg (Margolies) and Catherine Falvey, also were members of Justice Jackson's U.S. prosecutorial staff at Nuremberg. Zetterberg in particular did historically notable work there. But neither was, as Katherine Fite was, a senior attorney. And, as press noted during the trial, no woman was permitted to address the International Military Tribunal. See JOSEPH E. PERSICO, *NUREMBERG: INFAMY ON TRIAL* 212 (1994) (describing a radio report on this subject by CBS reporter Howard K. Smith).

two years as an attorney with the United States-Mexico General Claims Commission. In 1937, Fite joined the United States Department of State, working in the Office of the Legal Adviser. In 1945, Fite came to Justice Jackson's staff and to Nuremberg on detail from the State Department, to which she later returned. Fite was single until age fifty-two (1957), when she married Francis French Lincoln and became Katherine Fite Lincoln. Mr. Lincoln was a State Department officer, an economist, a widower, and somewhat older than Katherine. She retired from the State Department in 1962. Mr. Lincoln died in 1968. In widowhood, Katherine Fite Lincoln continued to live in Washington. She later moved to Massachusetts and died in 1989 at age 84.⁷

In summer 1945, Katherine Fite's employment by Justice Jackson was, because of her gender, a notable event. On July 11, the *New York Times* published a page four story headlined "Woman Joins Staff of War Crimes

⁷ See generally *Dr. E.D. Fite, Wrote '40 Civil Service Law*, N.Y. TIMES, May 19, 1953, at 29 (providing the obituary of Fite's father); *Katherine Fite Wed*, N.Y. TIMES, Feb. 1, 1957, at 16; *Weddings*, WASH. POST & TIMES HERALD, Feb. 3, 1957, at F9 (announcing the Fite-Lincoln marriage); *Francis Lincoln, U.S. Economist*, WASH. POST & TIMES HERALD, Aug. 6, 1968, at B4 (obituary); *Katherine Fite Lincoln*, WASH. POST, June 24, 1989, at D6 (obituary); Biographical Sketch, Katherine Fite Lincoln Papers, Harry S. Truman Presidential Museum & Library, Independence, MO, available at www.trumanlibrary.org/hstpaper/lincoln.htm.

Group”—Fite was a novelty.⁸ Fite, in fact, had been periodically assisting Jackson and his staff in Washington since his appointment in May. Jackson relocated to London in mid-June. Fite was detailed formally to Jackson’s staff on July 15 by Legal Adviser Green Hackworth for a period of three to four months.⁹

The London Phase

When Katherine Fite arrived in London, regular electrical service had not been restored to the bomb-damaged city. She was given a luxurious billet in the Cumberland Hotel off Grosvenor Square near the American Embassy and the Office of Strategic Services office space that was assigned to Justice Jackson and his team. When she first arrived at the office, she was told to report to Claridge’s hotel, where Jackson was staying and often working, because his room was better than his office. Katherine Fite was, like Jackson, smart, outspoken, active, independent, and a very fine lawyer. They hit it off immediately, developing a mutual high regard that weathered work difficulties at times and lasted for the rest of Jackson’s life.

⁸ See *Woman Joins Staff of War Crimes Group*, N.Y. TIMES, July 11, 1945, at 4.

⁹ See Letter from Katherine Fite to Dr. & Mrs. Emerson Fite (Sept. 23, 1945), in War Crimes File, K. Lincoln Papers, Truman Presidential Museum & Library, *supra* note 7 [hereinafter Letter from Katherine Fite].

In London, Fite quickly became one of the Jackson staff lawyers who assisted him in his negotiations with his British, Soviet, and French counterparts. The London Conference meetings occurred in Church House at Westminster Abbey. Around tables arranged in a square, each nation sought to explain, across language and conceptual divides, its legal system for criminal prosecution and its concerns about the others' various proposals. Jackson worked to explain that due process required a trial that would not be the ritual before a foreordained execution. He advocated proceeding, based on evidence, in public, in an adversary proceeding in which the accused would have counsel, other resources, and a right to defend himself, and where the prosecutor would carry the burden of proof. Fite sometimes sat in on Allied negotiations, but more often she worked in her own billet and office, drafting language defining the crimes that the IMT would have jurisdiction to adjudicate.

It is difficult to draw an organizational chart that captures accurately the work of the American lawyers in London. Jackson was of course at the top and Sidney Alderman was, at most times and for most tasks, the number two official. Francis M. Shea and Gordon E. Dean also served near the top ranks. Katherine Fite was among the next level lawyers—both Jackson and Alderman leaned on her regularly. From the Legal Adviser's office, she brought historical and professional knowledge of diplomacy, treaty drafting, and negotiation. She contributed, for example, to the arguments, based in the Kellogg-Briand Treaty, which answered the objection that it would be retroactive

criminalization to prosecute German defendants for waging aggressive war.

Travel and the Nuremberg Phase

On Saturday, July 21, 1945, Justice Jackson brought a delegation of U.S., British, and French officials (the Soviets could not attend) from London to Nuremberg to see the courthouse facility and city where the United States proposed to hold the trial. To mark the occasion of their arrival on the soil that had been Nazi Germany, the officials were photographed together at R-28 airfield outside of Fürth. The photograph shows nineteen people wearing pants and one wearing a skirt--Katherine B. Fite.



July 21, 1945: Representatives of the United States, Great Britain, and France stand in front of the plane that brought them to Nuremberg for the first time. Justice Jackson is fourth from the right. Katherine Fite is the woman.

Fite traveled with Jackson on this occasion, and on other serious missions that he undertook that summer and fall. During July, Fite traveled with Jackson to Frankfurt, the seat of the U.S. military occupation zone and the place where he (and they) conferred about military and legal matters with General Edward C. Betts, Colonel Charles Fairman (on leave from Stanford University, where he was a political scientist), and others. Shortly after the July 21 inspection trip to Nuremberg, Fite again flew with Jackson from London back to occupied former Germany to consult officials at the Potsdam Conference. At Schloss Cecilienhof in Potsdam, located in the southwest suburbs of Berlin, the post-FDR "Big Three," Churchill, Stalin, and Truman had their first summit meeting. (During the meetings, Churchill learned that the Labor Party had won the elections earlier that month, and he was replaced by the new Prime Minister, Clement Attlee.) Their conversations led to the Potsdam accord, which included a commitment to the international negotiations, agreement, and trial details that Jackson and counterparts were negotiating in London.¹⁰

¹⁰ See *Joint Report with Allied Leaders on the Potsdam Conference* (Aug. 2, 1945), in *PUBLIC PAPERS OF THE PRESIDENTS: HARRY S. TRUMAN* 179, 190 (1945):

The three governments have taken note of the discussions which have been proceeding in recent weeks in London between British, United States, Soviet and French representatives with a view to reaching agreement on the methods of trial of those major war criminals whose crimes under the Moscow Declaration of October 1943 have no particular geographical localization. The three governments

From Potsdam, Jackson and Fite made a side trip, passing through Soviet Army checkpoints, into the heart of Berlin. They visited Hitler's Reich Chancellery. Upon returning to London, Fite wrote to her parents in Poughkeepsie, New York, that she had been in

Hitler's *Reichskanzlei*—which was obviously a magnificent building—now largely ruins, though the first floor rooms remain. Saw Hitler's magnificent office—with his desk just dumped over in a heap with all the other rubbish. Got rooting around in the debris and discovered personal letters and office notes etc. (this not in Hitler's own room). Why, I said, a historian would go crazy. I had at first started looking for souvenirs—printed documents etc. I quickly discarded that for original documents in the rubbish. I turned up written notes, personal letters to some sort of an S.S. guard his father had written him (he knew the Fuehrer would be safe as long as he was with him) and what appears to have been an index to some files. I shall have them translated in the

reaffirm their intention to bring those criminals to swift and sure justice. They hope that the negotiations in London will result in speedy agreement being reached for this purpose, and they regard it as a matter of great importance that the trial of those major criminals should begin at the earliest possible date. The first list of defendants will be published before September first.

morning. Some larger books with lists of names I had to discard in the interests of discretion—we were after all in the Soviet zone in a building guarded by the Soviets.

There were literally yards and yards of movie film just kicking around. Mr. Fahy^[11] got interested and was going to see what could be done to have someone go in and sift the rubbish out.¹²

Soon after Potsdam, Jackson and colleagues reached the London Agreement, which they signed at Church House on August 8, 1945. Jackson and most of his senior staff soon decamped to Nuremberg. Fite, arriving in September, took up residence in the bomb-damaged but functioning Grand Hotel. Unlike senior male attorneys, Fite did not move to a seized German home—there were no female counterparts with whom she could share such quarters. Thus, Fite stayed in the Grand Hotel with junior lawyers and short-term visitors. (She was at least spared staying in the adjacent building, known informally as “Girls’ Town,” where secretaries, stenographers and other women lived in quarters where men were at least theoretically not permitted.)

¹¹ In 1945, former Solicitor General of the United States Charles Fahy served as legal advisor to General Lucius Clay in Berlin and was an important participant in policymaking regarding war crimes trials.

¹² Letter from Katherine Fite, *supra* note 9.

In Nuremberg during October and early November 1945, Fite worked more independently of Jackson, who had to manage diplomatic responsibilities, staff issues, prison and prisoner issues, and Tribunal issues while he also drafted his opening statement and prepared other material for trial. In an early October letter to her parents, Fite commented critically on some of the public stances that Jackson took in this phase regarding the efforts of the other prosecuting nations, and on the indictment-drafting process (in which she had no major role):

I think the Justice has made a mistake by giving the [news]papers to understand that only the U.S. means business. I get the impression that the other 3 have now ganged up to put the heat on us & maybe rush us through. At any rate—tho I know nothing first hand—I think the Justice has most unnecessarily given offense to the other countries. In many ways I have been sorry not to have been associated with him directly of late. But in other ways I am glad to have been disassociated. He is an able man but predominantly a politician, and not a strong man. The organization has suffered for the lack of a strong guiding hand. The indictment was rushed through and did not have the thorough going over it should have had for such an historical document. I know of at least one

historical misstatement which I brought to the attention of 4 people and it's still there. Careless work. Office politics. Then some time ago I found a very serious error in punctuation in the signed charter which was, of all places, in the section of crimes vs. humanity—i.e. the Jews, & quite changed the [Indictment's] sense.¹³

Fite was, in Nuremberg, among the U.S. lawyers who analyzed and assembled evidence and thus built the U.S. case. Jackson decided that the case would be built on captured documents more than on witness testimony. His executive officer, Colonel Robert G. Storey, divided the staff into subject matters teams and assigned them to prepare comprehensive trial briefs (summaries of collections of captured documents) for use at trial. Fite, working in tandem with a brilliant partner, Col. Benjamin Kaplan (U.S. Army), analyzed, assembled, and briefed the evidence against the Reich Cabinet, one of the indicted Nazi organizations.¹⁴

¹³ *Id.* (Oct. 8, 1945).

¹⁴ See Robert G. Storey, Memorandum for Mr. Justice Jackson, Subject: Trial Briefs (Nov. 12, 1945) (reporting, by topic and lawyers' names, that more than forty trial briefs had been completed within assigned deadlines, "although the lawyers, assistants, and secretaries worked day, night, and Sundays, and many times in extreme cold"), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, DC, Box 111, Folder 1. Benjamin Kaplan, following Nuremberg and a stint in private law practice in New York City, became a Professor of Law at Harvard

The Trial

The Nuremberg trial started on November 20, 1945. Justice Jackson delivered his majestic opening statement the next day. The American case came first. Attorneys filled the next few weeks in court reading trials briefs in summary presentations. The Kaplan-Fite case against the Reich Cabinet was presented to the IMT by Col. Storey in December. By that time, Fite's three-to-four-month leave from the State Department had expired. Although she was asked to stay in Nuremberg for the full trial or at least until late January, she decided to return to Washington.¹⁵ She left Nuremberg when the IMT took a Christmas recess, reaching the United States by early January.

Law School and, later, an Associate Justice of the Massachusetts Supreme Judicial Court. See Benjamin Kaplan, *Book Review*, 68 HARV. L. REV. 1092-97 (1955) (reviewing WHITNEY R. HARRIS, TYRANNY ON TRIAL: THE EVIDENCE AT NUREMBERG (1954)) (detailing his perspectives on Nuremberg).

¹⁵ See generally Letter from Katherine Fite, *supra* note 9.



December 19, 1945: Justice Jackson (center) and staff celebrate Christmas at his requisitioned house near Nuremberg; Katherine Fite is to the right of the tree.

The loss of Fite and other talented lawyers at this early point in the trial, near the conclusion of the U.S. direct case but months before the other nations' cases, the defense cases, and the cases against the indicted organizations were presented, adversely affected both the U.S. effort and the trial process generally. In effect, Justice Jackson lost a lot of his "A team" at the end of 1945. To be fair, some of the successors who rose to fill the resulting vacancies were of top quality. Nevertheless, some of the strongest members of the original U.S. staff were back on American soil in 1946. Katherine Fite, Benjamin Kaplan, Gordon Dean, and

quite a few others would have been very important assets in Nuremberg for the rest of the trial.

Fite's Letters: Comments on Gender

Katherine Fite's 1945 letters to her parents, which later were donated to the Truman Library, transcribed and placed on line, are filled with illuminating details and comments. One topic on which she wrote was the experience of being the token woman on the U.S. legal staff. On July 23, during the London phase of the work, she wrote:

Justice J. is a grand person, very simple, very witty, very kind and thoughtful. And a very heavy load [is] on his shoulders. He has arranged for some of us to hear a case in the House of Lords tomorrow, through "the Attorney", as the British say, I suppose. I believe I am to be included by virtue of my [being] female and perhaps State Dept status. It makes it a bit embarrassing to be included when my army colleagues with whom I work much of the time are not. But they're grand persons ... and don't seem to begrudge it to me.¹⁶

¹⁶ *Id.* (July 23, 1945).

In August, as the London negotiations were concluding, Fite wrote:

[T]ho being the only woman on the staff has many drawbacks, from the social point of view it pays. A masculine society is eager for women and we have the added advantage of being in civilian clothes. Tho when we go into Germany for the trial we army have to get into uniform to be more easily identified. ... My army colleagues are, I am sure, jealous of my trips, for I do go places and travel in high circles but they are very gallant about it. At least I am seeing how topside fares in military occupation.¹⁷

Fite continued to enjoy deluxe quarters, transportation, and meals. On November 11, near the eve of trial, she wrote to her parents about her life in Nuremberg:

I started out to tell you of the Justice's cocktail party for Senator [Claude] Pepper [D.-FL] yesterday—very pleasant—then on in a smaller party to dinner at the [Grand] hotel, and our night club [there], which is the center of our local life. Sat next to the Senator who regaled the party with tales of his visit to

¹⁷ *Id.* (Aug. 5, 1945).

King Ibn-Saud and his tent city. The biggest event of the King's life was his [February 1945] visit on [President] Roosevelt's battleship. (They had to put all the women off the ship, including [the President's daughter] Anna) [T]he Senator ... does not like Mr. Hackworth [the Legal Adviser]. Lots of people don't. Tonight another VIP dinner party at the Justice's [house] for the Senator. Long dresses. You see the panel of eligible women for such parties is small. So I always get there and usually get the seat of honor. It's fun, and also an effort when you're tired—as I am today.¹⁸

Conclusion

After Nuremberg, Katherine Fite returned to the State Department and continued her distinguished career. She wrote an official summary of the IMT's Judgment.¹⁹ She also stayed in close touch with Jackson, who she supplied, over the next years, with State Department and other information concerning Nuremberg, such as reports on the subsequent proceedings under General

¹⁸ *Id.* (Nov. 11, 1945).

¹⁹ See Katherine B. Fite, *The Nürnberg Judgment: A Summary*, XVI DEPT. OF STATE BULL. (No. 392, Jan. 5, 1947), at 9-19, reprinted as U.S. DEPT. OF STATE PUBLICATION 2727, EUROPEAN SERIES (1947).

Telford Taylor, William Caming, and others. Fite also saw Jackson at social gatherings, including Nuremberg staff reunions. She was the kind of talent whose gender I hope today would not be noticed—I hope that she would be like the women among us in the field of international justice: high-level, accomplished persons, professionally indistinguishable from the men.

In Katherine Fite's time, however, the gender difference and "gendered" behavior were notable. Justice Jackson, for instance, on at least an occasion or two, spoke about Fite and wrote notes addressing her as "Katie." Her family correspondence shows no use of that nickname. To her parents, Fite sometimes signed herself as "Titter," a nickname, perhaps from childhood, that I am sure was known to and used by only family. Some of her college friends called her "Kat" or "Kay." On all professional memoranda and in much correspondence, including Justice Jackson's, however, she was referred to as Miss Fite, Counsel Fite, Major (by assimilated military rank) Fite, or Katherine.

"Katie," coming from a fifty-three-year-old male boss to a forty-year-old senior assistant lawyer who went not by that name but by her given "Katherine," seems a bit too familiar, if not diminishing, if not sexist. Given Fite's overall high regard for and friendship with Jackson, however, I am confident that she kept any objection to herself.



1945: Justice Jackson and Katherine Fite, posing as if working on his office desk, Palace of Justice, Nuremberg.

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Fatou Bensouda

Fatou Bensouda is a Gambian lawyer and has been a Deputy Prosecutor of the International Criminal Court (ICC) since 2004. Bensouda was a government prosecutor in The Gambia and rose to the level of Solicitor General of The Gambia. In the late 1990s, she became the Attorney General and Minister of Justice of the country. In 2000, Bensouda became a legal advisor and trial lawyer at the International Criminal Tribunal for Rwanda in Arusha, Tanzania. In 2004, she was elected by the ICC's Assembly of States Parties to be the

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Table of Contents

Introduction

Introduction to the International Humanitarian Law Dialogs <i>David M. Crane</i>	1
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Lectures

Katherine B. Fite: The Leading Female Lawyer at London & Nuremberg, 1945 <i>John Q. Barrett</i>	9
Portraits of Women at Nuremberg <i>Diane Marie Amann</i>	31
International Criminal Law Year in Review <i>Michael P. Scharf</i>	55

Commentary

Bringing War Criminals to Justice at Nuremberg <i>William Caming</i>	83
Reflections on Women in International Criminal Law <i>Marilyn J. Kaman</i>	103
What Do Women Want From War Crimes Tribunals? Introduction by <i>Lucy Reed</i>	115
<i>Patricia Wald</i>	121
Seeking Accountability: Lessons From East Timor & Norway <i>Siri Frigaard</i>	141
Impunity Watch Essay Contest Winner: Reaching Out to the World <i>Sarah Owen</i>	151

Transcripts of Panels from Prosecutor Sessions

Update From the Current Prosecutors.....	155
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Gender Crimes at the International Level 191

Roundtable With Current Female Trial Attorneys 229

Conclusion

Elizabeth Andersen 269

Appendices

I. The Third Chautauqua Declaration..... 275

II. Biographies of the Prosecutors & Participants 279