Telling Sexual Stories in the Nazi Courts of Law: Race Defilement in Germany, 1933 to 1945

PATRICIA SZOBAR

Rutgers University

In the nineteenth-century imagination, miscegenation with "non-European" races, particularly Jews and blacks, who were deemed figures of pathological and deviant sexuality, was posited as a key source of the physical degeneration of the "European" individual, race, and nation. By the 1920s in Germany, even some progressive adherents of the new theories of eugenics had adopted similar notions, arguing that miscegenation led to a form of "species alienation" that caused the individual and nation to lose "life force" and biological fertility. Such concerns about intermarriage and miscegenation were to become a central ideological obsession among National Socialists, who even before the demise of the Weimar Republic began to issue calls for measures to prevent the sexual contamination of Aryan women and the birth of "mixed race" offspring. Indeed, fulminations against "race defilement" and the sullying of "Aryan maidens" featured prominently in Hitler's tract, *Mein Kampf,* and numerous other Nazi ideologists joined him in demanding an end to the mingling of races.[1] Thus, in their 1931

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[1]Adolf Hitler, *Mein Kampf*, combined ed. (Munich, 1940) and also, for example, Alfred Rosenberg, *Der Mythos des zwanzigsten Jahrhunderts*, 2nd ed. (Munich, 1932). On the general European background to ideas of race, miscegenation, and national decline, see Sander Gilman, *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness* (Ithaca, 1985); and Daniel Pick, *The Faces of Degeneration: A European Disorder, c. 1848–1918* (Cambridge, 1989). The specific National Socialist ideological constellations are discussed in Jeremy Noakes, "Nazism and Eugenics: The Background to the Nazi Sterilization Law

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annual convention, the organization of National Socialist physicians called for a prohibition on marriage between Jews and non-Jews. Once in power, Nazi Party members immediately began to appeal to the new regime to enact legislation criminalizing relations between "German" women and Jews, suggesting that "attempted contact should be punished by stripping the woman of her German citizenship and turning her over to the work camp, and by sterilization in cases of actual physical contact. The German *Volk* will survive only if it immediately undertakes measures to remain racially pure in spirit and body."[2]

Two years later, at the 1935 Nuremberg party rally, the regime announced legislation that forbade "mixed marriages" and extramarital relationships between "full Jews" and persons of "German or related blood." Formally titled the Law for the Protection of German Blood and Honor, the Nuremberg Laws were immediately heralded as a fundamental precept of the new Germany. Prison sentences under the law ranged from one day to fifteen years, although in the law's official formulation only men were liable for prosecution. (Women, both Aryan and Jewish, were not liable for criminal prosecution and could be charged only as witnesses in race-defilement proceedings.) Over the course of the next decade, several thousand Germans were tried for violations of the Nuremberg Laws.[3]

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of 14 July 1933," in *Ideas into Politics*, ed. R. J. Bullen, H. Pogge von Strandmann, and A. B. Polonsky (London, 1984), 75–94; and Robert Proctor, *Racial Hygiene: Medicine under the Nazis* (Cambridge, Mass., 1988).

[2]While I am aware of the problems associated with using National Socialist terminology such as the term *Aryan*, to avoid cumbersome constructions I do not enclose these terms in quotation marks. This should by no means be taken to imply that I accept the validity of Nazi racial categorizations. Indeed, as I argue in the course of this essay, the race-defilement investigations and trials were one of the key sites in which racial identities were constructed and contested under the new regime. Moreover, a sizeable minority of those individuals who were regarded as Jews under Nazi racial laws did not consider themselves Jewish, further complicating any reading of Nazi racial groupings as transparent and self-evident categories. For a discussion of the passage of the Nuremberg Laws, see Lothar Gruchmann, "'Blutschutzgesetz' und Justiz: Zur Entstehung und Auswirkung des nürnberger Gesetzes vom 15 September 1935," in *Vierteljahrheft für Zeitgeschichte* 31 (1983): 418–42, 425. See also Michael Ley, *"Zum Schutze des deutschen Blutes": "Rassenschande"-Gesetze im Nationalsozialismus* (Bodenheim b. Mainz, 1997); Otto Dov Kulka, "Die nürnberger Rassegesetze und die deutsche Bevölkerung im Lichte geheimer NS-Lage- und Stimmungsberichte," *Vierteljahreshefte für Zeitgeschichte* 32 (1984): 582–624; Uwe Dietrich Adam, "An Overall Plan for Anti-Jewish Legislation in the Third Reich," *Yad Vashem Studies* 11 (1976): 33–55; and Cornelia Essner, "Die Alchemie der Rassengesetzgebung," *Jahrbuch für Antisemitismus Forschung* 4 (1995): 201–25. For a general discussion of anti-Jewish legislation in the Third Reich, see Bruno Blau, *Das Ausnahmerecht für Juden in Deutschland* (Düsseldorf, 1965); and also Kai Henning and Josef Kestler, *Die Rechtsstellung der Juden in Staatsrecht und Staatsrechtslehre im Dritten Reich* (Heidelberg, 1985).

[3]According to the *Statistisches Jahrbuch für das deutsche Reich*, 1,911 cases of race defilement were prosecuted between 1935 and 1940. The peak years for race-defilement trials were 1937 and 1938, but trials continued at declining rates through the end of the war. See

For every individual brought to trial for the crime of race defilement (*Rassenschande*), scores of others were investigated but not charged. As both a racial and sexual crime, race defilement loomed large in the ideological and popular imagination over the remaining ten years of the Nazi regime. Sexuality, the site where private and public realms of politics, morality, and social order converged, in turn became a critical arena for the deployment of the regime's racial ideology and a focus of particularly intense regulation and control.

In the past several decades, an influential stream of scholarship has laid claim to the notion that the Nazi era cannot be understood purely as an aberration in modern history but needs to be interpreted within the framework of a larger German and European trajectory. However, this has not been the case for the historiography of law in National Socialist Germany, which remains largely wedded to traditional methodological and theoretical approaches. Though scholars have pointed to elements of continuity with law in Wilhelmine and Weimar Germany, and a few have made glancing comparisons to the legal systems of other authoritarian or totalitarian regimes, the law under National Socialism is typically regarded as having constituted a complete break from modern legal norms and standards.[4] Given the undeniable brutality of the law under National Socialism and its enthusiastic embrace of a racially driven framework for judicial decisions, it is not surprising that historians have tended to regard Nazi law solely as a coercive mechanism, an instrument of state authority, political repression, and terror.[5] No longer the handmaiden of

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Statistisches Jahrbuch für das deutsche Reich, vol. 577 (Berlin, 1942). Both men and women could be charged for violating the other paragraphs of the Nuremberg Laws, which forbade the employment of Aryan women under the age of forty-five in Jewish households and outlawed the flying of the Reich flag by Jews. In practice, a small number of women charged as witnesses in race-defilement cases also faced criminal prosecution, mainly for "aiding and abetting" or perjury. In German, the term *Zeuge* (or *Zeugin*, in its feminine form) is used to refer to the female partners of men accused of race defilement as well as the wide array of other individuals who were questioned and called to testify over the course of a race-defilement investigation or trial. When necessary for clarity, I distinguish between the two categories by adding the descriptors "female witness" or "outside witness."

[4]The Nazi era has thus been variously analyzed as an exemplar of fascism or totalitarianism, as both a rejection and as the apotheosis of modernity, as the inheritor of nineteenth-century biological racism, and as the precursor to social institutions and practices of the welfare state. For two general introductions to the historical interpretation of National Socialist Germany, see Thomas Childers and Jane Caplan, eds., *Reevaluating the Third Reich* (New York, 1993) and Ian Kershaw, *The Nazi Dictatorship: Problems and Perspectives of Interpretation*, 3rd ed. (London, 1993). That Nazi law has been regarded wholly as an aberration in the history of modern Western nations is true in spite of the fact that, for instance, Nazi Germany is not the only country to have enacted racial discrimination into its legal fabric; a possible comparison to the Nuremberg Laws, for example, might be the former antimiscegenation laws enacted in a number of states in the United States.

[5]Hinrich Rüping, "Strafrechtspflege und politische Justiz im Umbruch vom liberalen Rechtsstaat zum NS-Regime," in *1933–fünfzig Jahre danach: Die nationalsozialistichen Machtergreifung in historischer Perspektive*, ed. Josef Becker (Munich, 1983), 153–68;

justice, law under National Socialism is rightly seen as a tool of an exterminatory racism, imperialist expansionism, and the subjugation of groups deemed marginal, defective, or oppositional.

Particularly striking in the field of National Socialist legal historiography is the fact that legal scholars and historians have been slow to apply the insights of critical legal theorists and other thinkers associated with what has been termed the "linguistic turn." Such critical legal and post-Foucaultian theories—though they do not constitute a unified set of interpretive practices—elsewhere have yielded a rich framework of insights and approaches for historical scholarship. Among the most significant points of theoretical departure has been an expansion in the understanding of the disciplinary functionality of law. While traditional instrumentalist conceptions regard law as "a tool, a weapon, which authorities try to use (with or without success) to mold or influence behavior," more recently scholars have also located within law a constitutive function in shaping "meanings and self-understandings."[6] In its constitutive function, the law works to enforce and legitimize a range of social hierarchies. Thus the law has been shown to have a key regulatory role in the larger arena of gender and sexuality, including issues of marriage, reproduction, sexual access and behavior, and men's and women's place in the family, workplace, and community. Likewise, as legal theorists such as Ian Haney López have demonstrated, law operates in a complex fashion to encourage the social production of race by functioning both as a method of coercion and a kind of "taxonomical practice" that helps to organize society into races that seem natural and biologically real. In participating in the establishment and enforcement of social categories such as gender and race, law has been theorized to function as a "system of knowledge" as well as a "system of rules," an insight that as yet remains to be applied to the history of law in Nazi Germany.[7]

Matthew Lippmann, "Law, Lawyers, and Legality in the Third Reich: The Perversion of Principle and Professionalism," in *Temple International and Comparative Law Journal* 11, no. 2 (1997): 199–308, 199. For other useful introductions to law under National Socialism, see Bernhard Diestelkamp and Michael Stolleis, *Justizalltag im Dritten Reich* (Frankfurt am Main, 1998); Diemut Majer, *Grundlagen des nationalsozialistischen Rechtsystems* (Stuttgart, 1987); Ralf Dreier and Wolfgang Sellert, eds., *Recht und Justiz im Dritten Reich* (Frankfurt am Main, 1989); and Lothar Gruchmann, *Justiz im Dritten Reich: Anpassung und Unterwerfung in der Ära Gürtner* (Munich, 1988). For literature in English, see also Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (Cambridge, Mass., 1991).

[6]Laurence M. Friedman, "Review of Austin Sarat and Thomas R. Kearns, eds., 'Law in Everyday Life,'" in *Law and History Review* 13, no. 2 (1995): 427–28, 428.

[7]See Ian F. Haney López, *White by Law: The Legal Construction of Race* (New York, 1996); Carol Smart, *Feminism and the Power of Law* (London, 1989), 6. For a demonstration of the usefulness of gender and legal theory to historical analysis, see the contributions in the volume *Women-in-Law: Explorations in Law, Family, and Sexuality*, ed. Julia Brophy and Carol Smart (London, 1985), 50–70; see also Gerald Turkel, "Michel Foucault: Law, Power, Knowledge," *Journal of Law and Society* 17, no. 2 (1990): 170–93, for a useful account of the influences and congruities between Foucaultian and critical legal theories.

This essay is an introduction to the phenomenon of race defilement in National Socialist Germany. In it I shall begin with an outline of the more immediate effects of the Nuremberg Laws and their enforcement. Next, I shall consider some of the social implications of policing interracial sexuality. Finally, moving to the level of discursive constructions and effects, I shall consider some of the ways that the trials served to fashion complex and productive discourses on sexuality that were inflected by images and categories of race. In working through culturally prevailing notions of sexuality and gender, legal discourse in turn enabled the formation of racial identity and the enforcement of racial policy. Thus, even in Nazi Germany, the law had a constitutive function as well as a coercive and instrumental one. Law was not simply a thing apart, an abstract body of statutes and rulings imposed by the judiciary to regulate behavior through punishment. Rather, law under National Socialism was also a set of institutions, practices, and actors that participated and interacted with what Friedman has termed the "battery of normative ideas and habits" of everyday life and as such was instrumental both in mobilizing consent and helping to construct modes of self-perception and subjectivity.[8] Although the race-defilement trials enforced only one law among hundreds and commented on only one category of offender (men and women in "mixed" relationships), what was said about these issues constructed a set of social proscriptions and norms that had both ideological and practical significance for the German population as a whole.[9]

The Nuremberg Laws and the Fate of Individuals

Even before the passage of the Nuremberg Laws in September 1935, many mixed couples had grown weary of the condemnation and harassment they faced on a near daily basis. Particularly in smaller towns, where mixed couples lacked the protective camouflage of urban anonymity, the records contain many remarks that indicate that mixed relationships sparked "a great deal of unrest" in the community. In the Rheinland town of Emmerich, for example, community "uproar" forced one mixed couple

[8]Friedman, 428. My methodology thus implicitly argues for the explanatory potential of discursive analysis in illuminating everyday politics and social experience even under conditions of extremity, including National Socialist Germany. For a discussion of the explanatory potential and moral adequacy of discursive and linguistic interpretative methodologies, particularly in relation to National Socialist Germany and the Holocaust, see the contributions by leading historians in the special issue of *Central European History* 22, nos. 3–4 (1989), as well as the contributions in *Probing the Limits of Representation: Nazism and the Final Solution*, ed. Saul Friedländer (Cambridge, Mass., 1982).

[9]Until recently, the race-defilement investigations and trials have received comparatively little sustained scholarly attention. Most scholars who have mentioned the race-defilement trials have done so in passing as an example of the political persecution of German Jews, one stage of many in the regime's larger project of isolating Jews from the mainstream of German society in preparation for eventual deportation and annihilation. Race-defilement investigations and trials have also received mention in studies of Nazi anti-Semitic legislation and the

to stop appearing at the riverfront together in their "bathing costumes."[10] In Ramscheid, another mixed couple tried twice to marry in the year preceding the issuance of the Nuremberg Laws. On both occasions, their banns were torn down, delaying their marriage. After his girlfriend bore his child, the Jewish man was taken into protective custody, ostensibly because community outrage was so intense that he needed to be removed for his own protection. Though Ramscheid officials exaggerated the extent of "community outrage" as a pretext for his arrest, the couple clearly was the subject of considerable scandal, as evinced by a neighbor's comment that "even the children were whispering all sorts of things about their concubinage." Countless similar incidents of harassment of mixed couples were orchestrated by the Storm Troopers (Sturm Abteilung, SA) during the first years of Nazi rule. In one typical incident in 1933, a crowd of "twenty to thirty persons," headed by local SA members, cornered two Jewish men and their girlfriends on the street. The young women were slapped and shoved about, resulting in "scrapes and bruises." The two Jewish men were paraded about town while being forced to carry signs announcing their "crime." The regime in turn played up such incidents as part of their justification for introducing new laws governing interracial relationships, arguing that they would render such "spontaneous" outbursts superfluous.[11] As rumors of a forthcoming "legal solution" to the problem of interracial relationships circulated in the summer of 1935, many couples became increasingly wary about appearing together in public or acknowledging their relationship.

While community disapproval of mixed relationships was often intense, the situation for mixed couples became far more fraught with danger once the Nuremberg Laws were enacted in September 1935. Arrests for race defilement began immediately, and the first cases were brought to court within weeks of the issuance of the new blood purity laws. Under the strain of community disapproval, social and economic discrimination, and finally legal sanction, many mixed couples did in fact end their relationships. In some instances, it was clearly the Aryan partner who decided that

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"nazification" of the German legal system. See, for example, Sarah Gordon, *Hitler, Germans and the "Jewish Question"* (Princeton, 1984), 171–80, 218–45; Raul Hilberg, *The Destruction of European Jews* (New York, 1985), 27–38; Müller, 90–119; and Hans Robinsohn, *Justiz als politische Verfolgung: Die Rechtsprechung in "Rassenschandefällen" beim Landgericht Hamburg* (Stuttgart, 1977). More recent studies have begun to consider race defilement as a phenomenon in its own right, illustrative of larger processes of cultural and social enforcement in Nazi Germany. See Saul Friedländer, *Nazi Germany and the Jews: Volume I. The Years of Persecution, 1933–1939* (New York, 1997); and Robert Gellately, *The Gestapo and German Society: Enforcing Racial Policy, 1933–1945* (Oxford, 1990).

[10]Staatsarchiv Düsseldorf, Aussenstelle Kalkum (StAD/K) 7/900.

[11]StAD/K 89/114; Hessisches Hauptstaatsarchiv (HHStA) 483/5008. For an informative discussion of the Nazi practice of protective custody (*Schutzhaft*), see Bundesminister der Justiz, ed., *Im Namen des deutsches Volkes: Justiz und Nationalsozialismus* (Cologne, 1989).

the relationship had become a burden. Thus, for instance, one Aryan man, denounced on suspicion of race defilement, insisted that he had long before ended his relationship, stating, "We used to insult and berate each other about our differing racial backgrounds and descent. Over time, we became estranged from one another." Another Aryan woman, interviewed in 1937, stated that her relationship with her Jewish boyfriend had undergone a "marked cooling off" following the promulgation of the Nuremberg Laws. Recognizing the "futility" of their relationship, she elected to end their affair "in order to spare myself further trouble and inconvenience." Other couples appear to have come to a mutual conclusion that their relationship was too dangerous to continue. A number of couples reported deciding to end their relationship after reading newspaper accounts, while another couple told of having heard the Nuremberg Laws announced on the radio, whereupon they agreed, "This is the end of our friendship."[12]

The passage of the Nuremberg Laws also affected the behavior of couples who elected to continue their relationships in secret despite the fear of legal sanction. Some mixed couples appear to have ended the sexual side of their relationship or found substitutes for intercourse while still maintaining their romantic attachment. Since convictions often hinged on whether the date of the last sexual intercourse took place before or after the issuance of the Nuremberg Laws, quite a few couples under investigation for race defilement attempted to argue that they had ended the sexual side of their relationship upon hearing of the new blood purity laws. In other instances, the couple continued their relationship but claimed to have altered their sexual practices to substitute other forms of gratification for coitus. However, couples' claims to have abandoned their sexual relationship upon the issuance of the Nuremberg Laws were only rarely a successful defense against charges of race defilement.

On the whole, the Nuremberg Laws had a less immediate effect on the behavior of mixed couples than might be supposed given the very real danger of arrest and imprisonment. Usually the Nuremberg Laws dealt the final blow only to relationships that had been fairly casual from the start. A surprising number of couples of longer standing, whose relationships had overnight become criminal offenses, continued to see one another in secret.

[12]Staatsarchiv München (StAM), Staatsanwaltschaft (StAnw) 4529; HHStA 461/16145; HHStA 461/16133. Many Nazi officials were also in favor of extending the principle of racial separation to married couples as well, though efforts to relax divorce law were fraught with difficulty, as the regime was concerned to maintain the appearance of upholding the sanctity of the family. On 6 July 1938, however, the regime enacted a new marriage law that facilitated divorce under certain circumstances, including racial and other "irreconcilable" differences. A few disaffected Aryan spouses subsequently sued for divorce on the basis of their new-found "racial consciousness." See Hans Wrobel, "Die Anfechtung der Rassenmischehe: Diskriminierung und Entrechtung der Juden, 1933 bis 1945," in *Der Unrechtsstaat: Recht und Justiz im Nationalsozialismus*, ed. Redaktion Kritische Justiz (Baden-Baden, 1984), 99 ff.

Even couples who were interrogated by the Gestapo but released for lack of evidence often continued their relationship despite their brush with the Nazi police apparatus. Despite their realization that they were undergoing a significant risk, many mixed couples employed considerable subterfuge to meet, often arranging liaisons under the cover of darkness or outdoors on the outskirts of town. Other couples met in secret at the homes of friends or tried to disguise their identity to avoid denunciation and discovery. A few attempted to leave the country to marry, which was also a crime under the Nuremberg Laws. Other couples, particularly those with a "half-Jewish" partner, submitted applications for special permission to marry (Antrag für Beseitigung des Ehehindernis). Permission to marry was granted only rarely; many such couples, having thus come to the attention of the authorities, were subsequently charged with race defilement.[13] Many found their lives shattered when the Nuremberg Laws suddenly criminalized a relationship of very long standing. One couple, for example, had cohabited in a "relationship akin to marriage" for more than fifteen years, only to find themselves investigated for race defilement.[14] Indeed, Nazi police and legal officials often distinguished such long-standing and devoted relationships, noting in the official record that the relationship was no fly-by-night encounter but a "true love affair." Such seeming sympathy, however, had little effect on the ultimate conviction, though in some instances it may have served as a mitigating factor in sentencing, at least during the early years of the laws' enforcement.

Even among couples who ended their relationship upon the promulgation of the Nuremberg Laws, it was not always the Aryan partner who decided the risk was too great. At times, Jewish men elected to end the relationship out of a well-justified fear of punishment. In one such case, the decision to separate was clearly made at the cost of great anguish: "In the period that followed, he attempted to end the relationship with Miss Bernhard, who was very much in love with the defendant. . . . The result of their many discussions was that, at the defendant's urgent request, Bernhard agreed with a heavy heart to end the relationship. In the following period, Bernhard repeatedly attempted to reestablish contact, but the defendant continued to rebuff her efforts." According to the police, despite repeated interrogations the woman continued to deny the existence of a relationship out of love for the defendant. Finally, when threatened under oath at the judicial interrogation, she admitted their affair. Another Jewish man told interrogators that he had been dissuaded from ending his relationship by his girlfriend, who "promised that she would sooner allow

[13]Landesarchiv Berlin (LAB) 58/4005/1643. Going abroad for the express purpose of marrying in contravention of blood purity laws was a criminal act under the regulations governing the enforcement of the Nuremberg Laws. See, for example, StAD/K 17/22. For examples of couples who filed an Application for Special Permission to Marry, only to be subsequently charged with race defilement, see StAD/K 2/101 and 2/102.

[14]StAD/K 29/119.

her tongue to be torn from her mouth than make a confession." Yet another Jewish man tried to end his relationship following his release from a one-year sentence for race defilement, but his girlfriend could not bear to let him go. Tragically, the couple was caught a second time. Though the woman had steadfastly denied the relationship, following repeated interrogations she finally confessed, sobbing, "It was I who pressured Friedrich into sexual relations. . . . It was our hour of weakness, and we are both to blame." The police interrogator then noted in the record: "the female witness is full of self-reproach . . . she says that she will take her own life if the Jew is again sent to the penitentiary." As a repeat offender, her lover received a particularly high sentence of five years. Had she not admitted that she was the "driving force" behind the relationship, the court noted, the sentence would have been even higher.[15] With such threats of discovery and punishment, even when couples continued to see one another in secret, their relationships became fearful and guilt-ridden, torn by conflicting impulses of self-preservation and love.

The passage of the Nuremberg Laws was thus a tragic blow for many mixed couples. For many, the Nuremberg Laws dashed hopes of marriage. An investigation for race defilement, even in instances where no charges were filed, brought with it a great deal of unwelcome official attention and, for Jews, often presaged later investigation and official harassment for any number of supposed offenses against the Jewish regulations. For the Jewish partner, an arrest for race defilement could, and often did, result in death. Sentences for convicted Jewish race defilers in the earliest weeks of the enforcement of the blood purity laws generally ranged from three months to a year of jail. Soon, however, under official direction from the Ministry of Justice, sentences for Jewish men became increasingly severe, ranging from a year to four years or more of penal servitude (*Zuchthaus*). Conditions in penitentiaries were extremely harsh, and more than a few prisoners died while incarcerated. Jewish men released after serving their sentences often found their health ruined, their fortunes lost, and their families torn apart. In addition, while incarcerated, Jewish men were unable to take advantage of opportunities to leave Germany; indeed, the records are replete with instances of Jewish families pleading with the authorities for the release of their incarcerated sons, brothers, and husbands so that they might emigrate abroad. Though women could not be charged with and sentenced for race defilement, Jewish women typically were held in protective custody during the entire investigation and often for months after the trial as well. By 1937, Reinhard Heydrich, head of the Security Service (Sicherheitsdienst, SD) began to argue in party meetings and in written directives that protective custody should be considered for all Jewish women involved in race-defilement cases and for Jewish men who had served their sentences. By the early

[15]StAM StAnw 18037; StAD/K 10/181; LAB 58/4005/1714.

1940s, it had become official policy to turn Jewish women charged as witnesses in race-defilement cases and Jewish men who had served sentences for race defilement directly over to the secret state police (Geheime Staatspolizei, Gestapo). Jewish men who were convicted of race defilement and subsequently transferred to camps such as Sachsenhausen there faced special forms of torture and death. Following the start of deportations, many Jewish men and women were transported directly to the ghettos and death camps in the East after serving their term in protective custody or prison.[16] By contrast, Aryan men who were convicted of race defilement generally received shorter punishments and were more likely to be sentenced to jail time rather than penal servitude. Yet upon release, Aryan men often found themselves virtual outcasts, officially stripped of their rights of citizenship ("bürgerliche Ehrenrechte") and unable to find employment.[17] Aryan women charged as witnesses often spent weeks or months in protective custody; many lost their jobs, their reputation and standing in the community, and the custody of their children.

POLICING INTERRACIAL SEXUALITY

By most accounts, the majority of Germans accepted the promulgation of the Nuremberg Laws as a welcome stabilizing measure, a regulation that would end "wild" outbursts of anti-Semitism. Indeed, had it not been for the complicity and even cooperation of large segments of the German population, as the historian Robert Gellately has pointed out, it would have been impossible to enforce laws that infringed upon the most intimate realms of private life. Only the fact that many Germans readily provided authorities with evidence of other Germans' friendships and intimate associations with Jews made it possible for the criminal police and Gestapo to persecute racial offenders on such a grand scale.[18] Race-defilement records testify to the eagerness of denouncers who carefully monitored the comings and goings

[16]In Sachsenhausen in 1940, Jewish race defilers were tortured and killed by suffocation in a broom closet and by being hosed with cold water. See Raul Hilberg, *Perpetrators, Victims, Bystanders: The Jewish Catastrophe, 1933–1945* (New York, 1992). See also Bundesarchiv Potsdam (BAP) R22/1143, p. 221.

[17]For a statistical analysis of sentencing patterns that contrasts the treatment of Aryan and Jewish race defilers in Hamburg, Cologne, and Frankfurt am Main, see Robinsohn, 78 ff.

[18]On the reaction of the German population to the promulgation of the Nuremberg Laws, see Otto Dov Kulka, "Die nürnberger Rassegesetze und die deutsche Bevölkerung im Lichte geheimer NS-Lage- und Stimmungsberichte," *Vierteljahreshefte für Zeitgeschichte* 32 (1984): 582–624. According to Robert Gellately's statistical analysis of denunciations in Würzburg, 54 percent of race-defilement cases investigated by the Gestapo were initiated by a denunciation from the population (162). For a theoretical and comparative discussion of the phenomenon of denunciation, see also Gellately's "Denunciations in Twentieth-Century Germany: Aspects of Self-Policing in the Third Reich and the German Democratic Republic," *Journal of Modern History* 68 (December 1996): 931–67. The issue of female denouncers is discussed by Rita Wolters, *Verrat für die Volksgemeinschaft: Denunziantinnen im Dritten Reich* (Pfaffenweiler, 1996).

of their neighbors, acquaintances, and workplace colleagues, paying keen attention to evidence such as the apparent degree of intimacy connoted by forms of greeting, the time of day or duration of a visit, and a myriad of other seemingly suggestive details. Even the most fleeting of encounters could serve as the basis for suspicions of race defilement. Such suspicions were sometimes pursued to extreme lengths, as in one 1937 case in which a man went so far as to hire a detective to spy on his brother-in-law, whom he subsequently denounced to the Gestapo.[19] The police, in turn, cooperated by investigating any rumors of race defilement brought to their attention, thereby providing a venue for snoops to voice their suspicions and giving denouncers a legitimacy that they would not have had as simple neighborhood gossips.

Investigative records thus support Gellately's conclusion that the majority of race-defilement cases were initiated by a denunciation rather than through the Gestapo's own investigative efforts. However, what is also apparent is that in some instances friends, neighbors, and coworkers were aware of forbidden relationships yet failed to inform the authorities. In this, the phenomenon of denunciation in race-defilement investigations also lends support to Eric Johnson's caveat that the system of Nazi terror was able to function effectively even with only a fraction of the German population actively participating in denunciation.[20] In a 1940 case, for example, a neighbor questioned by the police admitted to long-standing knowledge of an instance of race defilement. In this as in similar cases, the woman was not officially rebuked for her failure to bring the relationship to official attention. Indeed, quite often the police reports note that an affair was "general knowledge" in the neighborhood and workplace of the accused. Hans Kosterlitz, a Jewish man who successfully eluded official investigation for race defilement, similarly recounted in a later interview that many of his colleagues had known of his relationship with an Aryan coworker but had pretended to be unaware of the affair. Though Kosterlitz trusted his colleagues not to inform on him, his knowledge of the consequences of discovery led him to the brink of "nervous collapse." Thus, despite a general atmosphere of suspicion and a widespread propensity to denounce, at times individuals who suspected an interracial affair preferred to allow their knowledge to remain ambiguous and unverbalized. In a few instances, friends and family members provided active support to mixed couples, as in the case of one woman who made her apartment available to her brother for liaisons with his Jewish girlfriend.[21] Yet however unspoken, when knowledge of

[19]HHStA 461/16145.

[20]Eric A. Johnson, *Nazi Terror: The Gestapo, Jews, and Ordinary Germans* (New York, 2000), 362–63.

[21]LAB 58/4005/1722; Hans Kosterlitz, "Das Ende einer Beziehung," in *Sie dürfen nicht mehr deutsch sein: Jüdischer Alltag in Selbszeugnissen, 1933–1938*, ed. Margarete Limberg and Hubert Rübsaat (Frankfurt am Main, 1990), 164–66. (The name Hans Kosterlitz is

an affair was widespread, it became increasingly likely that someone would choose to inform the authorities. A single denunciation then sufficed to initiate the investigative process. When confronted by a police investigator at their door, even those who had previously remained silent usually admitted knowledge of the affair.

Scholarship on denunciation has also paid a great deal of attention to explaining the motivation of denouncers, distinguishing between those who denounced for "affective" reasons such as adherence to Nazi ideology and those who brought accusations to official attention for "instrumental" reasons such as avenging personal resentments and grievances. Historians such as John Conolly, who has examined how the trope of the *Volk* community served to undergird a wide spectrum of denunciations and letters of appeal, have also begun the process of a more discursive analysis of the phenomenon of denunciation, an analysis that takes into account not only motivation but also modes of perception and legitimation.[22] In the case of race defilement, what remains particularly striking is the gendered dimension of the phenomenon of denunciation. Although it was ultimately the Aryan or Jewish man who was charged, for example, in many instances the target of the denunciation was the woman rather than the man. Thus, one denouncer, in an anonymous postcard addressed to the Gestapo, fulminated about the "offensive indecency" of many "bitches" and "whores," especially "that little so-and-so, Miss Lange," who consorted with Jewish men yet believed her "deceit" and "repulsive lies" would be overlooked. Another denouncer went so far as to write anonymous letters directly to an Aryan woman, threatening her, "We are going to keep on watching you, and we won't allow anyone to fall prey to your dirty tricks. . . . You are and will always be the biggest tramp we know, and we will warn everyone about you."[23] Particularly in the case of extramarital relationships, the target of the denunciation was most often the adulterous woman. Married Aryan women suspected of having affairs were regularly denounced, and community outrage tended to be particularly intense when the woman was the wife of a Wehrmacht soldier, as in the case of a Jewish man who was given an exceptionally harsh sentence of seven years for his affair with a married woman whose husband was on the eastern front.[24] Particularly in light of the fact that women could not be charged with race defilement, it is striking that so many of the denunciations were directed against the female partner. In the most vituperative denunciations, which typically fulminated against

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not a pseudonym.) For another case in which colleagues claim to have warned an Aryan woman to discontinue her affair without actually denouncing her, see HHStA 461/16900.

[22]John Conolly, "The Uses of Volksgemeinschaft: Letters to the NSDAP Kreisleitung Eisenach, 1939–1940," *Journal of Modern History* 68 (December 1996): 899–930.

[23]HHStA 461/15666; StAD 58/15207.

[24]LAB 58/4005/1544; LAB 58/4005/1704. For two other cases where married women were denounced for their adulterous affairs, see HHStA 461/16145 and StAM StAnw 3530.

the "betrayers of the *Volk*" and "the Jew's fancy women," such misogynistic language clearly drew upon existing cultural images of the sexually loose woman, now colored by the additional accusation of racial as well as sexual infidelity. In the case of adulterous relationships, the community was particularly likely to denounce on behalf of the cuckolded Aryan husband whose property and sexual rights were being violated by the affair. By contrast, a masculine and racial privilege appears to have exempted Aryan men from the most intrusive community scrutiny. Cultural notions of female sexuality, it seems, were particularly effective in functioning as a mode via which intense community surveillance and "self-policing" of interracial sexuality could be enacted.

Because an entire community was responsible for maintaining sexual standards, the scope of the investigations was broad. Prior to race-defilement arrests it was not uncommon for formal statements to be taken from as many as a dozen people, with investigators questioning friends, neighbors, coworkers, and family members for evidence of an "intimate relationship." In addition, at trials the net could be cast even wider when it came time to call for outside witnesses. In one case, a man called to testify before the court submitted a written complaint to his local prosecuting attorney, stating: "Yesterday I received a summons to appear as a witness in the criminal proceedings against Mr. Haacke for race defilement. I have never even heard of this person, Haacke, and I certainly know nothing relevant to the matter at hand." In yet another investigation, the police noted that the arrest had "resulted in the gathering of a crowd of about 60 persons."[25] Moreover, far more individuals were investigated for race defilement than were later actually charged with the crime. Even in those investigations ultimately deemed to be without basis, the broad scope of investigations meant that an accusation of race defilement became an event of public drama and scandal.

The presence of an audience in the courtroom in turn served to lend further publicity to the trials. Race-defilement proceedings were usually open to the public, though often the audience was cleared from the courtroom on the grounds of endangerment of public morals ("Gefährdung der Sittlichkeit"). Yet even when the audience was cleared from the courtroom, as in one Munich trial, all of the outside witnesses and the press were allowed to remain. For the reading of the verdict, which repeated many of the more intimate details of the relationship, the full audience was allowed to return.[26] Indeed, some Nazi officials attempted to quash the press publicity surrounding the trials. Despite their efforts, local officials continued to worry that the public commotion was having a dangerously "exciting"

[25]StAD/K 92/31; LAB 58/4005/1543. For two other examples of cases where large numbers of people were interviewed and called to testify, see StAM 6430 and LAB 58/4005/1656.

[26]StAM StAnw I/18162.

effect on schoolboys, who avidly followed accounts of trials in newspapers and the luridly sensationalist *Der Stürmer*. As a form of sexual spectacle, the race-defilement trials thus became all the more effective in inciting a form of community surveillance based on the sexual policing of women and Jews.

DISCOURSES ON RACE AND GENDER

In the process that Raul Hilberg terms "definition by decree," the Reich Citizenship Law, passed in conjunction with the new blood-purity laws, attempted to define who was a Jew and what constituted "German or related blood." A "full Jew" was a person with at least three grandparents who "adhered to the Jewish religion." *Mischlinge* of the First Degree were individuals with one Jewish parent, while *Mischlinge* of the Second Degree had one Jewish grandparent. The legal definition of the Aryan remained largely a negative one, characterized only by the absence of "Jewish blood." As numerous scholars have noted, this definition of Jewishness ultimately rested on the confessional allegiance of the grandparents, making a mockery of Nazi claims that Jewishness was a biological category unrelated to religion.[27] Consequently, past scholarship has often branded National Socialist definitions of Jewishness as irrevocably "absurd" and illogical, devoid of any explanatory meaning. The often contradictory and ambiguous enforcement of the Nuremberg Laws, in turn, is explained as the product of a haphazard, confused, and inconsistent legal bureaucracy.[28] Yet the regime's attempts to invest the process of racial classification with an aura of scientific and legal objectivity might be more meaningfully interpreted. The fact that definitions of Aryan and Jew remained unstable and contested in judicial practice instead may serve as evidence of a struggle over the social meaning of race, a struggle in which conceptions of gender and sexuality played a critical role.

To convict a person on a race-defilement charge, the courts needed first to determine the racial classification of both partners. Although members of the Nazi paramilitary organization (the SS) and party members had earlier been required to present proof of racial purity, quite a few individuals charged with race defilement first obtained their "certificate of racial descent" at the instigation of the court. Routine investigation into

[27] *Mischlinge* of both the First and Second Degree were exempt from prosecution under the blood purity laws—with the notable exception of those *Mischlinge* of the First Degree who were formal members of the Jewish religious community and thus classed as "Jewish equivalents" (*Geltungsjuden*). The new law stripped Jews (and single women) of their citizenship, making them instead subjects of the German Reich. For a discussion of the Reich Citizenship Law, see Hilberg, *The Destruction of European Jews*, esp. chap. 2; Müller, 98–99; and Proctor, 131 ff.

[28] See, for example, Ley, who also categorically rejects the notion that the Nuremberg Laws and the race-defilement trials had anything to say about Aryan racial constructions. Indeed, he argues that though Aryan men were also punished for race defilement, the Nuremberg Laws were "Jewish laws" in the medieval Christian tradition and as such were "only directed against Jews" (80).

birth and marriage registers, church and synagogue records, and tax rolls sufficed to determine to the courts' satisfaction the racial classification of the majority of Germans. In a surprisingly large number of cases, however, the court encountered problems assigning racial classifications. As the distinction between a Jew and a "half-Jew" was critical to a race-defilement proceeding, the prosecution often hinged on the racial classification of one parent. In practice, most cases of doubtful racial classification arose when the paternity of the accused or of the female witness came into question. Normally a child born out of wedlock to an Aryan woman was regarded as Aryan under the law, providing no reason existed to suspect an "incursion of foreign blood."[29] However, assigning the racial status to children born out of wedlock to Jewish mothers often proved more problematic in judicial practice.

One particularly difficult case was the 1937 trial of the Jewish architect Horst Berge. Although Berge confessed to an affair with an Aryan woman, the Wiesbaden court was thrown into confusion: Berge's mother claimed that her son's biological father was not her Jewish husband but an Aryan man, now long dead. When a racial anthropological examination conducted with the assistance of Dr. Mengele proved inconclusive, the court turned to the testimony of neighborhood gossips, who confided that Berge's true parentage had long been a topic of local speculation. On the basis of this testimony, the court concluded that Berge was indeed a half-Jew and acquitted him. However, the court noted, if Berge believed himself to be Jewish, it might nonetheless become necessary to convict him of "attempted race defilement," a charge as yet without precedent in Nazi judicial practice. Clearly unsettled by the implication that an individual's subjective racial identification might conflict with his or her "objective" racial categorization, the Wiesbaden court concluded that Berge had certainly been aware—if only "inwardly"—of his "mixed" parentage from childhood. Though legal discourse had called into being the concept of subjective racial identification, in most other instances the courts dismissed defendants' claims that their subjective racial identification conflicted with the "objective facts of racial descent." In such cases, the courts often attempted to find clues in the defendants' stories that would prove they had, in fact, known subjectively all along that they were full Jews—though some might have partially repressed that knowledge.[30]

[29]See Josef Wulf, *Die Nürnberger Gesetze* (Berlin-Grunewald, 1960), 20. The Certificate of Racial Descent (Abstammungsnachweis) is discussed also by Eric Ehrenreich in "The Institutionalization of Racism: From Pre-Nazi Genealogy to the Reich Genealogical Authority," manuscript, 2001.

[30]HHStA 461/16669. Documents from this case are also reprinted in Ernst Noam and Wolf-Arno Kropat, eds., *Juden vor Gericht, 1933–1945* (Wiesbaden, 1986), 139–50. In my discussion of this case, I use the same pseudonym adopted by Noam and Kropat (Horst Berge). See also LAB 58/1533.

When official documentation was inadequate, it was not uncommon for police and judicial investigators to consult neighbors, friends, and family to help establish the racial classification of the defendant and witnesses to the courts' satisfaction. Often this "common knowledge" of an individual's racial descent was based on the flimsiest of gossip and conjecture. When questioned by judicial investigators, for example, a clearly aggrieved stepfather stated: "If I am asked whether I know anything about the descent of [my adoptive daughter] Natalie's biological father, then I can with certainty declare that he must have been a Jew. Where my wife is living at the moment, I can't say." Neighbors likewise confirmed that they believed Natalie Wittstock's natural father to have been Jewish, though they could offer no concrete evidence to support their assumption.[31] In other race-defilement trials, family members were compelled to appear before the court to testify to their knowledge of the racial descent of the accused.

In addition to drawing the German population into the process of creating and assigning racial classifications, legal discourse served to instruct the population on the finer details of race relations in the new Germany. Though Nazi racial thinking held that Jewishness was not only a matter of descent but an essential aspect of physiognomy, many defendants and female witnesses argued that they had not been able to recognize their partner as Jewish. Repeatedly when questioned, Aryan defendants argued that their partner didn't "look Jewish" or "make the impression of being Jewish or of mixed race." In one case, the defendant admitted that he had become suspicious when he heard the name "Rosenbaum," but as the woman didn't "appear at all Jewish," he had been prepared to believe she was a *Mischling*. Both police and court officials took it upon themselves to instruct the German population on the methods of racial identification. In a number of trials, the court lectured the accused on ways to distinguish an Aryan from a Jew. One judge instructed a defendant on the clues to a woman's "non-Aryan" descent: "Some possible hints would be a woman's Jewish appearance, the fact that she has Jewish acquaintances or entertains other relations toward Jews, or that she uses Jewish expressions or displays other characteristically Jewish traits." In another trial, the court referred to a photograph of the female witness and noted, "She has a typically Jewish appearance," although another judge conceded that the "uneducated" might have difficulty making such fine distinctions: "The witness . . . has blue eyes and blond hair. These features obscure her Jewish racial characteristics so strongly that a lay person will have difficulty recognizing her as Jewish."[32] By these means, the enforcement of the intermarriage and blood purity laws helped to create a new institutional apparatus and system of knowledge to investigate, record, adjudicate, and educate on the question of race.

[31]LAB 58/1543.

[32]LAB 58/1544; verdict reprinted in Robinsohn, 38, 91.

The daily enforcement of the Nuremberg Laws by the police and the courts also produced images of race inflected by notions of gender. In legal representations of Jewish masculinity and femininity, racially stereotyped characterizations at least partially obscured the markers of gender. Jewish men were portrayed as deviant by definition; they were called the "seducers of maidens" who displayed "unbridled appetites," "unnatural inclinations," and "perverse desires." Jewish male sexuality was represented as animalistic and base yet possessed of a calculated, "shameless and criminal" desire to defile the Aryan woman. Here legal discourse echoed longstanding myths that branded Jewish men as pimps, pornographers, and "white slave traders" whose sole desire was to sexually exploit "German women" and spread syphilis and other sexual diseases through the population in a plot to undermine the Aryan race. Jewish employers, in particular, were repeatedly accused of wishing to molest any Aryan girl or woman under their employ, which served to buttress the rationale for prohibiting the employment of Aryan domestic help in Jewish households. Another common theme expressed in the investigative records was that the Jewish man had "concealed his Jewish identity" and made false promises of marriage in order to make the Aryan woman amenable to seduction. Time and again, the courts heaped abuse on Jewish men, who "in typical Jewish fashion" tried to exploit Aryan women "for their own sexual gratification." Such sexual hysteria, in turn, was extremely effective in fomenting anti-Semitic discrimination and widespread public and police harassment of Jewish men. In Berlin, for example, hysteria surrounding the supposed pornographic exploitation of "German women" by Jews was exploited to drive Jewish gynecologists out of professional practice, while elsewhere Jewish medical students were prohibited from conducting gynecological examinations on Aryan female patients. Thus, as Robert Jay Lipton has suggested, a form of "sexual anti-Semitism" was potently added to existing economic and political persecution as an effective means to stigmatize and socially marginalize Jewish men.[33]

Jewish women were characterized in similar fashion as promiscuous, morally corrupt, and sexually predatory and were often accused of concealing their Jewish identity from the hapless Aryan man. A 1937 verdict described the Jewish woman summoned as a witness in a race-defilement

[33]Robert Jay Lipton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York, 1986), 10. Regarding the persecution of Jewish gynecologists and medical students, see Friedländer, 159–61, and Michael Burleigh and Wolfgang Wipperman, *The Racial State: Germany, 1933–1945* (Cambridge, 1991), 78. Borrowing from the title of Klaus Theweleit's study, Friedländer terms the prurience and explicitness of sexual anti-Semitism a projection of National Socialist "male fantasies." In a highly intentionalist line of argument, James Glass further suggests that a particularly German "culturewide phobia against touching Jewish flesh" directly accounts for not only the Nuremberg Laws and their enforcement but for the Holocaust itself. See *Life Unworthy of Life: Racial Phobia and Mass Murder in Nazi Germany* (New York, 1997), xiii, 50–55.

case in typically derogatory terms: "The witness is a sexually predatory, morally depraved Jewess. With her unrestrained sexual drives and her brazen behavior she held the two accused men in thrall." Another court commented on the Jewish woman's "exceptional tenacity" in seduction.[34] Curiously, however, legal discourse devoted less attention to interrogating Jewish femininity and female sexuality than might be supposed, given the seeming likelihood that Jewish women would figure centrally as exotic, liminal creatures within the fascistic sexual imagination.[35] Nonetheless, in depicting Jewish women as sexually aggressive and corrupt, legal rhetoric effectively denied them the esteem rhetorically accorded Aryan femininity. Both Jewish men and women were depicted as sexual predators intent on spreading disease and degeneracy throughout the population, thus rhetorically legitimizing their exclusion from the body politic.

Representations of Jewish women as sexually dominating rested uneasily alongside images of a powerful and aggressive Aryan masculinity. On the one hand, judicial rhetoric depicted Aryan masculinity as naturally dominant and oriented toward sexual gratification, characterizing Aryan men's relationships with Jewish women as understandable, though unfortunate, lapses in judgment. Yet at the same time, sexual relations with a "Jewess" were regarded as a uniquely dishonorable act, a besmirching of the honor of the *Volk* that violated the most fundamental duty of the citizen of "German blood." As such, the act of race defilement constituted a moment of crisis in the representation of Aryan masculinity. To mitigate the image of the sexually errant and undisciplined Aryan man, legal discourse often attempted to highlight potentially extenuating or mitigating circumstances. It was often suggested that the Aryan man had been seduced, a circumstance that served partially to excuse the sexual lapse while at the same time problematizing the image of Aryan male dominance and self-control. Time and again, magistrates characterized Aryan male defendants as "weak willed," "in need of leadership," and "highly susceptible to outside influence." Other judicial verdicts suggested diminished capacity even in cases where the defendant had been found legally responsible for his acts. Often the courts described the Aryan defendant as "not particularly intelligent," "mentally backward," or possessed of a "moderate grade mental deficiency," which served to explain his diminished capacity and inability to exercise sexual restraint.[36] Aryan masculinity within legal

[34]Verdict quoted in Robinsohn, 67; see also HHStA 461/16892.

[35]This silence about the Jewish female body and sexuality is replicated in the scholarly literature. Burleigh and Wipperman, for example, devote little attention to Jewish women in their section on the "purification" of Jewish influence from the body of the nation (77–112). Likewise, Sander Gilman's studies of discourses of Jewish sexuality focus on representations of Jewish men and masculinity (see *Difference and Pathology*; and Sander Gilman, *The Jew's Body* [New York, 1991]).

[36]See, for example, HHStA 461/16143; HHStA 461/16677; HHStA 461/17795; HHStA 461/16679. Aryan masculinity remains as yet to be explained fully in the historical

discourse thus remained an unstable ideal, not least because many Aryan men brought before the courts on charges of race defilement had clearly failed to uphold its standards.

The case of Mr. Knopp, an Aryan man whose Jewish wife was accused of conducting an affair with a family friend, illustrates the courts' response to men who most flagrantly violated the masculine Aryan ideal. When questioned, Knopp admitted knowledge of his wife's affair but said that he felt it was not his place to object to his wife's extramarital liaison since he had for years suffered from nervous disorders and impotence. Their marriage was a happy one, Knopp asserted, if companionate rather than sexual in nature. The court lavished contempt upon Knopp for his failure to uphold the standards of Aryan masculinity, stating in its verdict: "If he is impotent, his impotence does not have only a physical basis, but is a result of psychological defect. He is limp, womanish, and lacking in energy. . . . He reads Schopenhauer and plays chess, but isn't good for much else. This kind of man is completely irrelevant to the *Volk* community. . . . He is a wretched, weak-willed, listless human being." In short, the court concluded, "He is useless as a man." Clearly, such an egregious violation of the standards of Aryan masculinity demanded an exceptional judicial response. Although Knopp initially appeared only as a witness in his wife's trial, the court convicted him of "procuring" and "aiding and abetting."[37]

Even though women could only be summoned as witnesses in race-defilement proceedings, they were far from minor players in the trials. The Aryan women summoned to testify before the courts were subject to severe scrutiny and judgment. As the primary bearers of racial honor and the biological key to racial purity, the figure of the Aryan woman became the representational and physical ground upon which the struggle for racial purity was carried out. In this, judicial rhetoric echoed official Nazi ideology, which placed much of the blame for the perceived moral decay of the Weimar Republic on the figure of the sexually aggressive, independent "New Woman."[38] In linking women's sexual honor, racial purity, and the fate of the nation, legal discourse in turn enhanced cultural tensions inherent in the role and status of Aryan women. Thus, though legal rhetoric often pointed to the Aryan woman's sexual inexperience as the cause of her seduction, Aryan women were simultaneously depicted as saturated with sexuality and always potentially available and corruptible. The court's characterization of one Aryan woman called as a witness is typical: "She is a fairly frivolous girl who has been ruined by these perverted relations and

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scholarship. In Burleigh and Wippermann's insightful and pathbreaking chapter on men in the Third Reich, for example, class ultimately largely stands for and subsumes Aryan masculinity per se (267–302).

[37]Verdict reprinted in Robinsohn, 69.

[38]For an analysis of the extent to which the "New Woman" of Weimar and Nazi rhetoric existed in reality, see Atina Grossmann, "*Girlkultur* or Thoroughly Rationalized Female?" in *Women in Culture and Politics*, ed. Judith Friedlander et al. (Bloomington, 1986).

is now in danger of becoming a harlot."[39] Often the verdicts implicitly expressed puzzlement that the Aryan woman, though of "full blood," offered no resistance to the seduction. Commenting on one female witness, a verdict remarked, "From the very beginning, Miss Friese put up no resistance to the accused. She is descended from four grandparents all of German blood, and by birth she is a national of the German Reich [*Reichsangehörige*]." Friese's lack of resistance was cited in turn as a mitigating factor in her Jewish lover's sentencing. In the notorious 1942 trial of Leo Katzenberger, the court similarly alluded to the witness Irene Seiler's sexual availability, suggesting that in having accepted small gifts from Katzenberger, she had entered into a "relation of dependence" and made herself "amenable" to him. The court rebuked Seiler for her "undisciplined manner," her "stubbornness," and her lack of "repentance," while outside witnesses supplemented these metaphors of dangerous independence by commenting disapprovingly on Seiler's "liking for cigarettes."[40]

The courts repeatedly invoked the needs and expectations of the *Volk* community when chastising Aryan women for their sexual transgressions. Even though the actual number of cases had been declining since 1939, in part because so many German Jews had emigrated, police and legal personnel worried that incidents of race defilement were on the rise due to wartime conditions and the absence of husbands and fathers at the front. This perception had practical implications in the daily enforcement of the law, as judges rebuked Aryan women severely for taking advantage of the "lack of supervision" they enjoyed when men were not home to "maintain order" while giving exceptionally harsh sentences to Jewish men who had "taken advantage of wartime conditions."[41] According to legal rhetoric, the innately pure and honorable Aryan girl, left to her own devices, was all too likely to become a fallen woman. Legal discourse thus fashioned an image of Aryan femininity that drew on shifting and fluid cultural stereotypes of femininity and female sexuality to explain the behavior of the sexually errant Aryan woman. While functioning as a method of explanation, legal discourse in turn also served the dual purpose of regulation and control.

What has emerged as a relative consensus within the historiographical debate is that the National Socialist prescriptive image of the Mother of the *Volk* cloaked the reality that women, like men, were divided into two

[39]Verdict quoted in Robinsohn, 62.

[40]StAM StAnw 18081; United States National Archives (USNA) RG238/NG154. On the Katzenberger trial, see also the journalistic recreation by Christiane Kohl, *Der Jude und das Mädchen: Eine verbotene Freundschaft in Nazideutschland* (Hamburg, 1997). The names of Leo Katzenberger and Irene Seiler are not pseudonyms.

[41]One Jewish defendant was sentenced to death as a "dangerous habitual criminal" for having an affair with a woman whose husband was serving at the front; see LAB 58/4005/1710. Concern about the sexual infidelity of women whose husbands had been called to the front reached the highest official level. See, for example, BAP R22/1085, pp. 5–7, 36.

broad categories: first, the healthy and racially pure Aryan; second, the racially "other"—Jews and Gypsies, the hereditarily "inferior" (*minderwertig*), and the "asocial." The overarching ideological imperative for the racially valuable woman was to serve the nation, primarily in her reproductive but also in her productive capacity.[42] In reducing the role of racially valuable women's sexuality to that of fertility, Annette Timm argues, Nazi discourse contributed to the desexualization of "ordinary" women. By contrast, outsiders—in this case, prostitutes and "asocials"—were oversexualized, and their sexuality and behavior were subjected to intense surveillance. Other scholars such as Stefan Maiwald and Gerd Mischler have characterized the Nazi era similarly as a time of prudery, when love and individual desire were to be subordinated to the needs of the *Volk*, to increasing the population of healthy Aryans.[43] Despite the social and sexual conservatism of the majority of Nazi officials, however, German society was not entirely desexualized, nor was the ordinary Aryan woman figured simply as an asexual being. Though the exclusion of women from prosecution under the Nuremberg Laws was in part justified by the notion that it was the male partner who was sexually active while the female was weak and sexually passive, a simultaneous ideological construction figured all women as hypersexual, governed by emotions and eminently corruptible. In this, the National Socialist ideology on women drew upon prevailing modern discursive constructions wherein women figured as a fundamentally "problematic and unruly body" whose sexuality, if not constantly regulated, would disrupt the social and moral order.[44] Despite their

[42]Although the notion of a "racial state" has rightly been criticized by Atina Grossmann for ignoring the immense differences between those labeled as racially inferior and particularly for eliding the specificity of Nazi anti-Semitism, it nonetheless has been useful for focusing attention on the underlying biopolitical logic of the Nazi regime. For helpful overviews of the historiography of women in Nazi Germany, see Atina Grossmann, "Feminist Debates about Women and National Socialism," *Gender & History* 3 (1991): 350–58; Eve Rosenhaft, "Inside the Third Reich: What Is the Women's Story?" *Radical History Review* 43 (1989): 72–87; and Adelheid von Saldern, "Victims or Perpetrators? Controversies about the Role of Women in the Nazi State," in *Nazism and German Society*, ed. David F. Crew (London, 1994), 141–65.

[43]Annette F. Timm, "The Ambivalent Outsider: Prostitution, Promiscuity, and VD Control in Nazi Berlin," in *Social Outsiders in Nazi Germany*, ed. Robert Gellately and Nathan Stoltzfus (Princeton, 2001), 192–211; and Stefan Maiwald and Gerd Mischler, *Sexualität unter dem Hakenkreuz: Manipulation und Vernichtung der Intimsphäre im NS-Staat* (Hamburg, 1999). Arguments for sexual self-determination and enjoyment for its own sake flourished only briefly in Germany during the Weimar years, as documented in Atina Grossmann's study, *Reforming Sex: The German Movement for Birth Control and Abortion Reform, 1920–1950* (Oxford, 1995).

[44]Carol Smart, "Introduction," in *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality* (New York, 1992), 8. For a useful survey of the way in which the paradox of the simultaneously asexual and hypersexualized female has functioned since the Victorian era, see Carolyn J. Dean, *Sexuality and Modern Western Culture* (New York, 1996).

supposed innate purity and honor, Aryan women could not be completely relied upon to devote their energies to producing healthy and racially pure offspring for the *Volk*. Indeed, the National Socialist regime devoted significant personnel and resources to the racial education of girls and women. This intense focus on the proper sexual and racial comportment of girls and women was double-edged, since the image of the young Aryan maiden—sturdy, blond-plaited, uniform-clad, pure of heart and body—remained ever discursively twinned to her negative image—the wan and wispy maiden of the *Stürmer* caricature, defiled and lured into depravity by the treacherous wiles of the lecherous Jewish man. Moreover, at the highest level of the party bureaucracy, there was official recognition that the rhetoric of female sexual propriety did not correspond to reality. The idealized image of the naturally pure and good Aryan maiden and mother of the *Volk*, often invoked in National Socialist discourse, thus was inherently unstable, symptomatic of substantial ideological and cultural anxiety. Such anxieties served in turn to sanction a level of surveillance that was directed not only against "outsiders" but against "insiders" as well.[45]

STRATEGIES OF DEFENSE

Defendants' and witnesses' attempts at self-defense are equally revealing about the manner in which the German population absorbed racial ideology through the prism of cultural assumptions about gender and sexuality. Many defendants, for example, claim to have misunderstood the finer aspects of the Nuremberg Laws, which was certainly plausible given the complexity of the laws and their implementation. One common misunderstanding involved defendants and witnesses who took the formal title of the Nuremberg Laws—the Law for the Protection of German Blood and Honor—too literally. In a number of cases, for example, defendants and witnesses took the notion of "protection of German blood" more literally than intended. In a letter to the prosecuting attorney, one defendant

[45]See, for example, the "Tätigkeitsberichte der Gau- und Kreisamtsleitungen" of the Office of Racial Policy (Rassenpolitisches Amt) in StAM, NSDAP 145. Within the Justice Ministry, officials were preoccupied with the problem of the proliferation of adultery among war wives and the particularly troubling statistics regarding relations of German women with POWs and foreign workers. Officials remarked that the "sexual hardship" (*Geschlechtsnot*) women faced while their husbands were away at the front also fueled the wave of adultery among war wives. See, for example, BAP R55/1442; BAP R55/1443; and BAP R22/845. There were also practical, evidentiary reasons for exempting women from prosecution for race defilement. See, for example, Herbert Gräml, "Die Behandlung der an Fällen von sogenannter Rassenschande beteiligten 'deutschblutigen' Personen," in *Gutachten des Instituts für Zeitgeschichte* (Munich, 1958), 1:72–76. On the immense bureaucracy and recording apparatus that monitored the morals and behavior of the German population in an attempt to distinguish between the worthy and unworthy, see Lisa Pine, *Nazi Family Policy* (New York, 1997); and Elizabeth D. Heineman, *What Difference Does a Husband Make? Women and Marital Status in Nazi and Postwar Germany* (Berkeley, 1999).

pointedly remarked that his Jewish girlfriend "had been sterilized in May 1939, so there was *no* danger that relations with her could result in offspring." In this and similar cases, however, the courts refused to consider as a mitigating factor the fact that one or both of the partners in a mixed relationship had been medically certified as sterile.[46] Other defendants told investigators that they had not realized that sexual intercourse with prostitutes fell under the scope of the Nuremberg Laws, an assumption that was widespread in the larger community. Even the courts implied that prostitutes had forfeited their racial honor and their right to protection from race defilement. In one case, the court convicted a Jewish man who had a long-standing arrangement with an Aryan prostitute. However, in assessing his sentence, the court considered as a mitigating factor that the defendant had "already been punished by having contracted syphilis from the witness . . . who, in any case, cannot herself be counted among the more valuable members of the German *Volk*."[47] Many defendants and their attorneys and families echoed such assumptions about prostitutes' lack of honor and attempted to defend themselves by arguing that they had been lured into sexual relations by the superior wiles of the professional. As one defense lawyer wrote in a letter to the court, it was well known that such "female personages" were highly practiced at "approaching men and luring them into intercourse." Similarly, another Jewish man explained in self-defense, "I did not seek an acquaintance there with a woman of ill repute; rather, the opposite is true. As in all such cases, it is the woman who wishes to make the acquaintance of the man."[48] With such arguments, defendants and their attorneys hoped to shift the majority of blame for the sexual encounter to the woman while attempting to win judicial sympathy by appealing to male solidarity and knowledge of the world.

Other men, both Aryan and Jewish, attempted to excuse their behavior by claiming that they had been inebriated, an explanation for misbehavior seldom employed by women in race-defilement cases. Aryan and Jewish men also blamed their actions on "foolishness," invoking the cultural script of the male youth led astray by dint of folly rather than calculated misdeed. Often, Aryan men claimed to have been unaware that their partner was Jewish until after their first sexual encounter. Young Aryan men also occasionally succeeded in winning judicial sympathy by claiming seduction. As one Aryan defendant argued, "In my defense, however, I wish to state that I was seduced by Miss Jakob. . . . Miss Jakob very cleverly was able to beguile me with her words, saying that I was an attractive man, and that she was fond of me. I then succumbed to her lures." The police

[46]LAB 58/4005/1543, emphasis in original. See also, for example, LAB 58/4005/1520.

[47]LAB 58/4005/3000. See also LAB 58/4005/1618; LAB 58/4005/1544.

[48]LAB 58/4005/1686; LAB 58/4005/1533. Race-defilement records testify to a fair amount of casual prostitution and relationships that subsisted on gifts and help with the rent.

investigator agreed: "The accused was completely at the mercy of the Jewess's seductive wiles. . . . The Jewess behaved like a whore and is mainly to blame for events." Though the Aryan man was convicted, his seduction was regarded as a mitigating factor in sentencing. For Jewish men, claims of seduction rarely encountered a sympathetic judicial hearing. In a typical case, the courts reacted to a Jew's claim of seduction with derision, characterizing it as a "prime example of Talmudic effrontery. . . . He claims not to have been the seducer; rather, it was Miss Schmidt." Another Gestapo officer, in an equally scornful aside in an interrogation record, commented, "Isenberg is trying to place the entire blame for the sexual activities on Mrs. Glade. He claims never to have instigated the sexual intercourse; rather, it was always Mrs. Glade. In typical Jewish fashion, Isenberg refuses to take any responsibility for his errors."[49]

Women, even though they could only be called as witnesses, were far from passive bystanders in the trials. Over the course of a race-defilement investigation and trial, a complex pattern of negotiation and accommodation often developed among Aryan and Jewish women and police and court officials. Such negotiations often assumed a gendered form as women colluded with stereotypical images of masculinity and femininity to deflect police and judicial interrogations and rationalize their behavior. Several verdicts suggest that Aryan women occasionally utilized the courts' representations of injured innocence, as in the statement given by one young Aryan woman: "I am convinced today that he took advantage of my innocence and my purity in the crudest possible way, and that his only desire was sexual gratification. His sexual perversity has left me psychologically damaged."[50] Both Aryan and Jewish women supported claims of innocence by invoking images of domestic virtue. When witnesses attempted to question Irene Seiler's propriety by claiming she had been seen on several occasions waving to Katzenberger "through one of the back windows of her flat," Seiler countered this accusation of public visibility by invoking an image of domestic propriety, claiming she only stood before the window when performing household chores such as dishwashing.[51] Other women testified that their only contact with the accused man took place in the course of normal household duties, such as shopping and entertaining their husband's business partners. Thus, it seems, both Aryan and Jewish women called as witnesses in race-defilement trials often tried to manipulate popular assumptions about gender and sexuality in their own defense. Quite understandably, the central concern of both women and men called to testify before the police and courts in such cases was to deflect the accusation of race defilement and avoid unofficial sanction and official punishment whenever possible. Imbedded in their statements of

[49]StAD/K 8/38, 8/39; StAD/K 29/72; StAD/K 29/115.
[50]Verdict reprinted in Robinsohn, 109.
[51]USNA RG238/NG154.

self-defense are both deliberate and unconscious discursive strategies of negotiation that drew on available images and scripts of masculinity, femininity, and sexuality. In employing cultural images and norms in self-defense, female witnesses and male defendants hoped to achieve popular and official sympathy and lenient treatment before the police and courts.

Rules of Evidence

One of the investigator's central tasks was compiling and reconstructing the evidence for the illegal sexual relationship. Over the course of an investigation, defendants and witnesses were interrogated repeatedly until they offered a sufficiently detailed and convincing account of the alleged sexual encounter. Interrogators questioned defendants and female witnesses about the most precise and intimate facts, probing for information on the maneuvers of seduction, the couple's state of arousal, where and how they touched, what clothing they wore and what they removed, the positions of their bodies, and whether "gratification" was achieved. Investigators were careful to document all trysts and encounters as precisely as possible. A Munich Gestapo report was typical in its exquisite attention to detail, describing at length how the couple drove through the city streets "for quite a long time" before stopping the car in front of a local landmark to consummate their relationship. Subsequent encounters were again documented with the utmost precision, naming times, dates, and locations in detail.[52]

Many of the facts elicited with such vigor in the course of interrogations appear irrelevant to the assessment of guilt and to the sentencing process. For example, during the course of interrogations, investigators routinely inquired whether intercourse had taken place "with protection" or "without protection," a detail that never served as a mitigating or exacerbating factor in sentencing despite the avowed intent of the Nuremberg Laws to "prevent the birth of mixed race offspring." Investigators also routinely pursued the possibility that the woman had received gifts or money from her lover. Again, however, even women who replied in the affirmative faced no formal legal charge, though presumably the implication of casual prostitution carried with it an added social stigma. Other sexual details were of greater practical significance to the investigation. For example, a key focus of police and judicial interrogation was the sexual history of the female witness. Jewish women were subjected to particularly harsh interrogation when they denied having other relations with Aryan men. In one interrogation record, it is apparent that the "half-Jewish" woman was placed under significant duress: "I wish to state under oath that I had no other intimate relationships with men following my

[52]See, for example, StAM Landratsämter (LRA) 30755; StAD/K 169/31; StAD/K 8/38, 8/39; StAM StAnw 15031. Quote from StAM 8154.

affair with Nicklas. Even after being advised about the consequences of perjury, I continue to insist on the truth of my claim." In another case, a young Aryan woman who admitted to engaging in "petting" with her Jewish boyfriend was subjected to relentless questioning about her prior sexual history in an attempt to belie her claim of chastity and so uphold the race-defilement charge. Jewish men who denied having relationships with other Aryan women were also questioned aggressively in an attempt to uncover further instances of race defilement.[53]

Police and judicial interrogations also devoted a great deal of attention to whether intercourse had taken place "in a normal fashion" or whether what were termed "perversions" were involved. Investigators asked specific and direct questions about any sexual acts outside of "normal" coitus. When the couple did engage in "perversions," the investigative and court records described the acts in explicit detail. Many investigation records reveal the fact that oral sex and forms of masturbation were the object of intense police and judicial interest and scrutiny. Investigative and judicial records also commented extensively on any aspects of the case that pointed to the couple's deviant sexuality. In one case, for example, the court remarked that the witness's "red Russian boots"—among other things—had "incited the defendant's lust." Investigators went so far as to ask specific questions regarding acts that failed to take place. One interrogator noted, for example, that the accused had "tried two or three times to engage in oral intercourse with her. . . . Whether on this occasion Miss Geyer took the defendant's member in her hand and stroked it could not be determined."[54]

In filling in gaps in the narrative of a sexual liaison and assessing the evidence for race defilement, investigators constantly appealed to the "life experience" of observant neighbors to determine the facts of a case. One case, for example, rested on the testimony of a neighbor whose presumption of a sexual relationship was based on the fact that the Jewish defendant had a key to the woman's apartment. Another case rested on the testimony of a subletter who told judicial investigators that she was certain that the witness and the defendant had a sexual relationship; when the defendant came to visit, the couple locked the bedroom door, whereupon she heard the "rhythmic squeaks" of the bedsprings "until the door was opened fifteen minutes later."[55] Police officials also searched homes for physical clues of a sexual relationship such as intimate articles of clothing or "prophylactics," and outside witnesses were encouraged to recount telltale physical signs of sexual activity, such as mussed or stained sheets, details that were recounted with precision in the records of the case.[56]

To rebut defendants' "unbelievable" stories, the prosecutors also invoked "life experience" and "worldly understanding," announcing their

[53]LAB 58/4005/1544; StAM StAnw 15809. See also LAB 58/4005/1572.
[54]HHStA 461/KLs 1.37; StAM StAnw 18081.
[55]LAB 58/4005/1544; LAB 58/4005/1656.
[56]See, for example, StAM 6430; StAD/K 7/900.

skepticism with such routine phrases as "The defendant's statement of self-defense and the witness's testimony are implausible and will be refuted." Couples who claimed to have ended their relationship upon hearing of the Nuremberg Laws were subjected to particularly rigorous interrogation. One couple, for example, claimed to have ended their love affair in 1933, though they continued to see each other nearly every day. Commenting on the plausibility of their account, the court remarked, "There is no apparent reason why the relationship, which lasted many years, should have come to an end in 1933. The defendant's explanation that he had grown old cannot be taken seriously."[57] Contradictions and gaps in testimony were often resolved by similar appeals to "worldly experience." In the trial of a Jewish shopkeeper, for example, the court commented on the original testimony, stating, "This account seems implausible, or at the very least incomplete. Our experience indicates that a girl won't allow herself to be used sexually in this way unless previous intimacies have taken place—even if . . . she has consumed two glasses of wine." "To this day," the judge declared, the female witness "refuses to tell the whole truth." Because of her refusal to endorse the court's version of the sexual encounter, the woman was convicted of aiding and abetting.[58]

Writing to a local attorney in charge of a race-defilement case, a head prosecutor instructed his subordinate on the necessary standards of evidence:

> The results of the investigation are quite meager. In particular, what is missing is a more precise description of how the two persons in question met, how their relationship developed, and finally, how it came about that they engaged in sexual intercourse. . . . It would also have been advisable to inquire more precisely into the nature of the observations made by Ingrid Link that enabled us to conclude that the accused had sexual intercourse with Elisabeth Eckert from April 1935 until 1936.[59]

Such relentless attention to detail on the part of Gestapo and judicial interrogators can partially be accounted for by a standard of proof that necessitated painstaking documentation of the crime. For one, repeated acts of race defilement were deemed evidence of "criminal intent," and a "continued offense" required harsher punishment than a one-time misdeed. Police interrogations also elicited details that potentially had a bearing on the sentencing, including such mitigating factors as the defendant's inebriation or the female witness's aggressive seduction or "lack of honor." Moreover, sexual details elicited during an initial interrogation could in turn be used as leverage in subsequent interrogations of reluctant defendants and witnesses.

[57]StAD/K 7/900.
[58]HHStA 461/KLs 7.38.
[59]StAD/K 10/175.

Quite often, police officials moved between interrogation rooms, using details elicited from one of the partners to pressure additional information or a confession from the other. However, the sheer repetition of sexual details elicited during the course of an investigation is striking and cannot entirely be accounted for by the practical exigencies of the legal process. Sexual details that appear in the police investigative records were repeated in court records before the investigating magistrate and again in summary form for the final verdict. Written reports were similarly lavish in repeating sexual detail, and the bureaucratic enforcement apparatus generated a seemingly unceasing flow of descriptively explicit reports to higher courts, to the Reich Ministry of Justice, to local health authorities (Gesundheitsämter), to the Office of Racial Policy (Rassenpolitisches Amt), and to a myriad of other social welfare, educational, medical, psychological, and military agencies and officials. In their "will to knowledge" and obsessive attention to sexual detail, police and judicial interrogators thus displayed a desire to document that went beyond the requirements of legal proof. Moreover, in fashioning a narrative of the sexual encounter, legal discourse surrounding the trials became highly sexualized. This reiteration of sexual detail throughout the levels of prosecution and enforcement in turn created its own dynamic and constellation of effects.

TELLING SEXUAL STORIES

Legal rhetoric enforced a normative definition of sexuality that was both racist and sexually conservative in its implications, condemning as "perverse" all sexuality not designed to produce racially pure offspring within the bonds of marriage. Paradoxically, however, over time legal discourse served to expand the realm of the sexual by attributing sexual meaning to even the most casual social interaction. Although the first decree governing the implementation of the Nuremberg Laws stated that only sexual intercourse was punishable under the law, in practice local courts gradually began to expand the definition of sexual intercourse in their rulings. This practice was ultimately ratified by a decision of the Supreme Court (Reichsgericht), which asserted that any behavior that could serve to "gratify the desires of at least one of the partners" was sexual and fell under the scope of the racial purity laws.[60] Though local courts welcomed

[60]Martin Tarrab-Maslaton, *Rechtliche Strukturen der Diskriminierung der Juden im Dritten Reich* (Berlin, 1993), 84. For other accounts of the actions of the Supreme Court (Reichsgericht) in race-defilement cases, see Müller, 100-105; Rolf Lengemann, "Höchstrichterliche Strafgerichtsbarkeit unter der Herrschaft des Nationalsozialismus," Ph.D. diss., Marburg, 1974; Friedrich Karl Kaul, *Geschichte des Reichsgerichts*, vol. 4 (Glashütten, 1971); Uwe Diederichsen, "Nationalsozialistische Ideologie in der Rechtsprechung des Reichsgerichts zum Ehe- und Familienrecht" in *Recht und Justiz im Dritten Reich*, ed. Ralf Dreier and Wolfgang Sellert (Frankfurt am Main, 1989), 241–72; Hans Wullenweber, *Sondergerichte im Dritten Reich: Vergessene Verbrechen der Justiz* (Frankfurt am Main, 1990), 198–202.

the high court decision as a precedent-setting advance, in practice the need to determine whether an act was designed to achieve sexual "gratification" resulted in considerable confusion.

Using the high court decision as precedent, local police officials began to investigate with remarkable thoroughness whether the "sexual desires" of one or both partners had in fact been gratified. One near-verbatim transcript of an interrogation gives an unusual glimpse of the methods of police persuasion. After recording background information, the police official opened the interrogation by instructing the Aryan woman on the legal definition of the sexual act: "What constitutes criminal sexual intercourse is not only normal intercourse between the man and the woman but also all other manual actions that are intended to lead to sexual arousal or gratification or which do result in gratification. (The term is further explained to the female witness.) . . . When you leave the building, you should have the liberating feeling that you have told the truth and that nothing can happen to you." Alternating veiled threats with the reassuring metaphor of the confessional, the police interrogator successfully elicited all the necessary details of the woman's sexual history and her one-night liaison with a Jewish traveling salesman. In other instances when defendants confessed to sexual intercourse, interrogators probed for physical evidence to document male "gratification." Both male defendants and female witnesses were thus routinely asked to report whether the man had ejaculated. In the case of women, however, "gratification" was more difficult to document by physical means. For example, when pressured by an interrogator, one Jewish man admitted: "I also tried to satisfy Miss Liedl's sexual desire using my hand. However, I can't say with certainty if my efforts in this respect met with success." In other cases, interrogators relied on the woman's own reports of gratification or lack thereof. After repeated questioning, one Jewish woman maintained, "As far as I can recall, the last time I obtained sexual satisfaction from Ludwig was three years ago." Dissatisfied with the woman's denials, the interrogators questioned her Aryan boyfriend, who was forced to concur: "Though I achieved sexual satisfaction by these means, Mrs. Grünbaum did not."[61] Though legal discourse explicitly acknowledged the reality of female orgasm, simple participation ultimately substituted for more specific evidence of "gratification." Over time, such interrogative practices began to assume a dynamic of their own, as police and judicial investigators probed for evidence of gratification even in instances where no sexual intercourse or "substitute actions" had taken place. Thus, for instance, when an Aryan woman admitted that she often exchanged a casual embrace with a male Jewish friend, she was subjected to rigorous questioning. After lengthy denials, the woman reluctantly admitted that it was possible that their "sexual organs" had indeed touched through their clothing during an embrace.

[61]StAD/K 29/70, parentheses in original; StAD/K 29/48; StAD/K 29/117.

Finally, following exhaustive interrogation, she admitted, "I really can't be sure whether Siegfried might not have obtained sexual pleasure of some sort from our contact."[62]

In the absence of evidence of gratification, police and legal officials next turned to searching for evidence of sexual desire. In the resulting narrative, the construction of the erotic experience required that the "actions that were intended to initiate sexual intercourse" be delineated in graphic detail. Thus, for example, interrogators elicited precise information about one defendant's maneuvers of seduction: "He was possessed of a keen desire for sexual intercourse with her. In order to make her amenable to the act, on one or two occasions, when he was alone with her in the bathroom, he pulled her toward him, touched her breasts through her clothing, and kissed her." In another case, the interrogator noted in an aside on the record, "By these means, he hoped to awaken carnal appetites in the girl and make her amenable to coitus."[63] Such interrogative practices paved the way for the more radical local courts to expand even further the definition of criminal sexual intercourse. In some instances, courts used evidence of sexual desire or attempts at seduction to convict Jewish men of "attempted" race defilement. Other courts asserted that race defilement could take place without any attempts at seduction or physical contact at all. In 1939, for example, a Jewish man was convicted of race defilement for glancing at a young Aryan girl across the street. The court ruled that, although the man had no physical or verbal contact with the girl, his glance "had a clearly erotic basis."[64]

One 1938 case tried in the Berlin courts is particularly illustrative of the discursive struggle to define the nature of erotic experience within the aegis of the law. In May of that year, Leo Wallach, a Jewish salesman, was arrested and charged with repeated violations of the blood purity law. The objective circumstances of his case were not in dispute, as Wallach readily admitted to being a habitual visitor at the establishment of Mrs. Ziegler, who advertised her place of business under the guise of a massage institute. During an early visit, Wallach took a liking to a young woman, Miss Diamand. As he chatted with her in an upstairs room, he observed her make repeated small adjustments to the lapels of her dressing gown. At this point, Wallach suggested that she disrobe and, in the words of the prosecutor, "walk back and forth, bending and turning her body, in the manner he requested." Over the following months, this procedure was repeated on four or five occasions. In a few instances, Miss Diamand disrobed entirely, while on other occasions she modeled various undergarments—including twelve camisoles, by the prosecutor's count. On the last occasion, Wallach and Diamand were discovered during a routine police patrol.

[62]StAD/K 92/121.
[63]StAM StAnw 18081; StAM StAnw 15809.
[64]HHStA 461/KMs 51.39.

Leo Wallach's legal counsel mounted an energetic defense. Wallach's actions, the defense counsel argued, had not displayed that quality necessary to establishing the act of intercourse, namely, that there be "contact between" the two parties. Wallach had "stood there quietly, neither touching her nor touching his own body in any fashion." Such "one-sided offenses of a sexual nature" did not meet the legal definition of intercourse and in fact had been explicitly excluded as such by the Supreme Court. This, the defense counsel suggested, was to prevent actions such as attending a revue or cabaret from falling under the purview of the Nuremberg Laws. Furthermore, Wallach's only motivation was one of aesthetic appreciation for the unclothed female form. The prosecutor emphatically rejected the defense arguments. First, "contact between" the two partners was unnecessary to establish the act of intercourse. Nor were Wallach's actions a mere one-sided offense, as the presence of Miss Diamand's body and her behavior had acted in a contributory fashion. Moreover, Wallach had not remained content with the mere act of looking but had in fact been an active partner who aimed at obtaining sexual satisfaction. Thus "intercourse" had in fact taken place "between" the two partners.

Though not entirely persuaded of the artistic nature of Leo Wallach's interest, the court could find no evidence that he had engaged in sexual activity, noting: "Coitus is always sexual intercourse, but the reverse is not necessarily the case. The performance of indecent acts may constitute sexual intercourse, but not every indecent act is sexual intercourse." While Wallach's behavior was certainly intended to procure erotic stimulation, it was "commonly understood" that the mere sight of the nude female body was insufficient to obtain actual gratification. The court did wonder whether Wallach might have achieved gratification on the occasion of his first visit, when he kept his hand in his right pants pocket. However, the court noted, "He carries himself to the left." Moreover, Miss Diamand insisted that she had on no occasion observed any physical evidence of arousal and, as the court remarked, "she must be considered something of an expert in such matters." In a scathing rebuttal, the prosecutor challenged the magistrate's assessment. "Had the court consulted a specialist, it would have been forced to acknowledge that its belief in the objective impossibility of obtaining sexual satisfaction by such means is medically insupportable—quite apart from the fact that it is a contravention of all principles of logic to invoke a 'common understanding' with reference to sexual perversions." The findings of medical science, the prosecutor concluded, would undoubtedly determine this to be an instance of "one of the so-called psychic onanism-related manifestations." Though the prosecutor requested a sentence of three years' penal servitude, Wallach was acquitted on grounds of insufficient evidence. While the prosecutor's appeal was pending, Leo Wallach "absconded," leaving notice of his departure for the United States.[65]

[65]LAB 58/4005/1695, emphasis in original.

CONCLUSION

Before 1933, the majority of German Jews considered themselves as much German as Jewish. Yet within the space of a few years, Jews had become outcasts on the margins of German society. Much of this isolation was accomplished by way of legislation, as over the course of the 1930s the Nazi regime enacted hundreds of anti-Jewish laws, from early measures that excluded Jews from the civil service to later decrees that forbade them to own pets or radios. But it was the Nuremberg Laws that arguably penetrated most deeply into the private and intimate spheres of social and family relations, fatefully separating Jewish from non-Jewish Germans. Unlike many other anti-Semitic laws, whose discriminatory effects were experienced with near exclusivity by the Jewish population, the blood purity laws drew Jews and non-Jews alike into the enforcement process. As historians such as Marion Kaplan have noted, the mere existence of the Nuremberg Laws sufficed to intimidate Jews and to cause many Germans to withdraw from Jewish friends and from family members in "mixed" relationships and marriages.[66] Thus the Nuremberg Laws heightened a process of internal conformity and behavioral adjustment to accord with National Socialist norms. Moreover, though the actual number of convictions remained relatively small (perhaps three thousand over the course of ten years), far more individuals were investigated than were charged. Each investigation and trial in turn had a rippling effect across entire communities, as neighbors, friends, and coworkers were interrogated and drawn into the spectacle of enforcement.

National Socialist discourse and practice surrounding sexuality was a complex and often contradictory linking of the health of the nation, racial purity, and the virtues and duties of men and women in the new Germany. Though the avowed aim of the Nuremberg Laws was to quash all interracial sexuality, legal discourse paradoxically narrated the proliferation of illegal and "deviant" sexual encounters. In eliciting a level of descriptive and explicit detail well in excess of what was necessary from the standpoint of legal proof, investigators turned the trials into a dramatic reenactment of deviance. Indeed, the excessive zeal with which police and judicial investigators questioned women about details of their sexual encounters evoked concern at the highest official levels. In August 1942 the Reich Ministry of Justice issued a directive stating that official questioning of female witnesses should be aimed only at determining whether a sexual encounter had taken place. More explicit inquiries about the nature ("Art und Weise") of the sexual encounter should not be pursued; to persist in such inquiries "would raise the question of a peculiar 'inner or mental attitude'" on the part of the interrogator.[67] Paradoxically, in recounting

[66]Marion Kaplan, *Between Dignity and Despair: Jewish Life in Nazi Germany* (New York, 1998), 46, 78–81.

[67]BAP R22/845.

and reiterating sexually explicit testimony, legal rhetoric suggested the rampant sexualization of daily life. Such sexualization, by authorizing voyeurism and prurient fantasies, in turn enabled the co-opting of citizens into a network of sexualized surveillance and self-policing. Given the very short lifetime of the Third Reich, such modes of enforcement could only function successfully by resting upon older, existing patterns of explanation and control, most prominently, the sexual monitoring of women and of racial "others." In critical ways, therefore, Nazi discourses and practices of racial enforcement demonstrate lines of continuity for a regime that is often regarded as the very antithesis of a democratic society.