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### The Collini Case: A Novel (book review)

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prosecuted for a capital crime and also under RICO. The assistant U.S. attorney knows the charge is a stretch, but she has her orders to press ahead. Judge Norcross asks his law clerks to prepare a summary of the law of continuing criminal enterprises under RICO. “And here’s a nice bone for you two to chew on: Can the accidental shooting of a bystander constitute conduct in aid of a racketeering enterprise such as a street gang?”

Hudson’s court-appointed attorney is William Redpath, a defense lawyer with vast experience. “Transcripts of his politely remorseless dismemberment of prosecution witnesses were passed around at law schools ... as examples of the art of cross-examination at its finest.” Redpath, quirky and curmudgeonly, is a stunningly drawn character who enlivens every page on which he appears. One senses that Ponsor had great fun in creating him.

Ponsor juxtaposes the current-day death penalty trial with a notorious true-life death penalty case from 1806. In fact, Ponsor dedicates the novel to the memory of Dominic Daley and James Halligan, two travelers who were hanged in Massachusetts in 1806 for the murder of a local man. He intersperses descriptions of modern-day political machinations and courtroom theatrics with those of the case from two centuries before. Local prejudices abounded then, and decisions were made based on matters other than evidence. Ponsor does not point them out, but the similarities with the Hudson prosecution are clear. The positioning for political gain, the willingness of those inside the circle to treat outsiders differently, the frenzy of the populace for a quick and onerous punishment—all find counterparts in the Hudson case.

Ponsor’s main characters face choices that require them to consider not just the greater good as they or others perceive it, but ethical dilemmas that might forever change their lives. Pressure mounts and decisions take on greater importance—decisions on whether to speak or keep silent, on whether to say something with certainty when one is not certain, on whether to confide in another or not.

*The Hanging Judge* features not only a riveting legal case, but a subplot about Norcross’ personal life. When we meet Norcross, a widower, he is just coming out of a reclusive period and beginning to date.

He is aware of his awkwardness but cannot seem to find a way to compensate for it. He finds himself over-thinking situations and reacting in ways that surprise and dismay him. Most surprising for him is that his dating life interferes in unexpected ways with his work, and the story shifts between the Hudson case and the problems that Norcross faces in developing his relationship with Claire Lindemann, a professor at Amherst College. The evolution of this budding relationship, with all its missteps and misunderstandings, is crucial to the story, as, in addition to the angst of a new relationship, much of the novel is told through conversations between Norcross and Lindemann.

Being a judge, Ponsor provides an insider’s knowledge regarding how a judge manages his courtroom and his cases, from the important aspects to the most mundane. As a writer, he integrates that information in the novel without distracting from the narrative. For instance, when Norcross is seating a jury, “[s]mile back, he told himself, but not too much. Look unconcerned. Trial judging was a kinetic art, like dance—a matter of posture and presence, aiming to create a certain pattern or atmosphere.”

In a novel that invites so many considerations on aspects of death penalty cases, it may be inevitable that some matters are not fully realized. Although Ponsor understands the accused’s point of view, he seems more comfortable with the legal aspects of the case, and gives less attention to how Hudson survives in a jailhouse full of convicted felons, many of whom are attached to various gangs, and some of whom may be angling for information from him that can be traded to prosecutors for sentence reductions. Ponsor sets up a serious problem for Hudson behind bars, but after an intense introduction, leaves the situation mostly unresolved. This is the only true disappointment in a novel that otherwise delivers in all respects.

In his acknowledgments, Ponsor writes, “Charles L. Black Jr.’s book *Capital Punishment: The Inevitability of Caprice and Mistake* ... offers the most pointed analysis of capital punishment I know of. My novel may be viewed, in part, as an attempt at a fictional version of his excellent book.” No matter the inspiration, Ponsor has crafted a thoughtful story that neither preaches nor demands that a reader accept a particular viewpoint. Ponsor’s

art is in presenting shades of grey. *The Hanging Judge* leaves the door open to contemplation and assessment without the novelist’s judgment interfering. ☉

*JoAnn Baca is retired from a career with the Federal Maritime Commission. Her husband, Lawrence Baca, is a past president of the Federal Bar Association.*

### **THE COLLINI CASE: A NOVEL**

BY FERDINAND VON SCHIRACH, TRANSLATED FROM THE GERMAN BY ANTHEA BELL

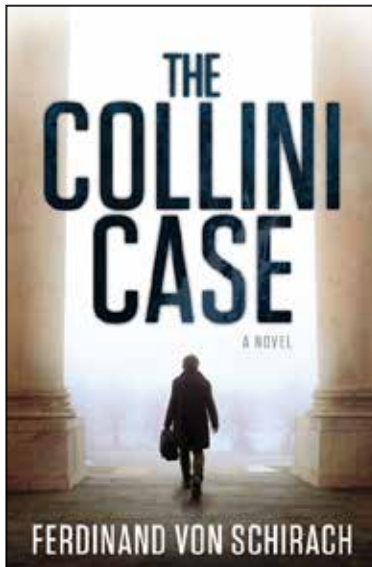
*The Viking Press, New York, NY, 2012. 191 pages, \$25.95.*

### **Reviewed by Michael Ariens**

Ferdinand von Schirach is a German criminal defense lawyer who has previously published two vivid and brilliant short story collections, *Crime: Stories* and *Guilt: Stories*, which were reviewed in *The Federal Lawyer’s* October 2011 and September 2012 issues, respectively. His latest book, *The Collini Case: A Novel*, like his short stories, gives the reader telling details that offer insights into the human condition. But *The Collini Case* seems less interested in its characters than in teaching us about the continuing stain of Germany’s past. This leads von Schirach to use stock figures (the silent killer, the noble lawyer, the unhappily married woman, the long-grieving widower) who have suffered stock tragedies (the deaths of loved ones, unhappy marriages) and who engage in stock actions (uncover the larger truth, have an affair, threaten or attempt to bribe the hero). The novel is simply not realistic enough to induce the reader to suspend disbelief, and von Schirach only barely avoids turning it into a melodrama.

*The Collini Case* starts promisingly. Fabrizio Collini kills a man in Berlin’s famous Hotel Adlon by shooting him four times. He then stomps on the man’s face again and again with the heel of his shoe. He goes to the lobby and tells the receptionist to call the police because the man in room 400 is dead. Why did Collini so brutally murder this unnamed man?

The first occasion on which the reader—at least one who is an American law-



yer—may be unable to suspend disbelief is when Caspar Leinen, a criminal defense lawyer and the novel's protagonist, is called to serve as Collini's sole defense counsel despite his having qualified for his law license just 42 days before. It gets worse. Leinen later (in my eyes, too much later) learns that he personally knew the deceased. He also knows the deceased's only surviving relative, a granddaughter, and engages in a perfunctory affair with her while representing Collini. Leinen spills client confidences to too many other characters, apparently to advance the plot. Under German law, the family of the deceased may employ an "accessory prosecutor." The famous and world-weary Richard Mattinger, in his mid-60s, who has "never yet lost in a murder trial," agrees to serve in that capacity. The experienced Mattinger takes Leinen under his wing, but we know he is playing his own game. The lawyer for the company that the deceased owned makes several villainous and wholly ineffectual appearances. Finally, Leinen uncovers an explosive secret, which may end his career at its beginning. But our intrepid defense lawyer will not let mere friendships or career advancement get in the way of fulfilling his duty to his client.

Despite his best efforts, Leinen is initially unable to learn from Collini why he killed his victim, who turns out to be Hans Meyer, a well-known 85-year-old industrialist. The murder trial begins, and still Collini's motive is unknown. But German trials, unlike American trials, are intermittent and episodic, rather than continuous. The episodic nature of the trial allows for Leinen's eureka moment. He

brilliantly finds the key to Collini's motive in Germany's past, and despite the harm that making this public may cause others, Leinen explains Collini's actions.

The legal twist in the case is one that lawyers and other students of the law will enjoy. Von Schirach has taken a page from German legal history, a subtle change in the German criminal code that can be used alike by the conflicted, such as Collini, and by the evil, such as Nazi collaborators. Leinen masterfully explains this actual change in German law in a way that advances Collini's case. Unfortunately, the pedantry of the explanation reduces the dramatic force of the novel.

Another problem with the novel is that, on occasion, it seems to be translated from one foreign language (German) to another (British English). It is simple enough to understand "lift" (elevator), or the variant spelling of "storey," but it is more difficult when the translator uses "landing barge" for "dock," "answerphone" for "answering machine," or, most annoyingly, "briefs" for "cases," which stems from the fact that, in England, solicitors prepare "briefs" for barristers. Unlike barristers, American defense lawyers, like German ones, take cases from the beginning.

Despite the criticisms in this review, *The Collini Case* resonates because it reminds us, as Faulkner said, that "The past is never dead. It's not even past." It continues to haunt the present. ☉

*Michael Ariens is a professor of law at St. Mary's University in San Antonio, Texas, where he teaches American legal history, constitutional law, evidence, and other courses. He is the author of Lone Star Law: A Legal History of Texas (2011) and other books.*