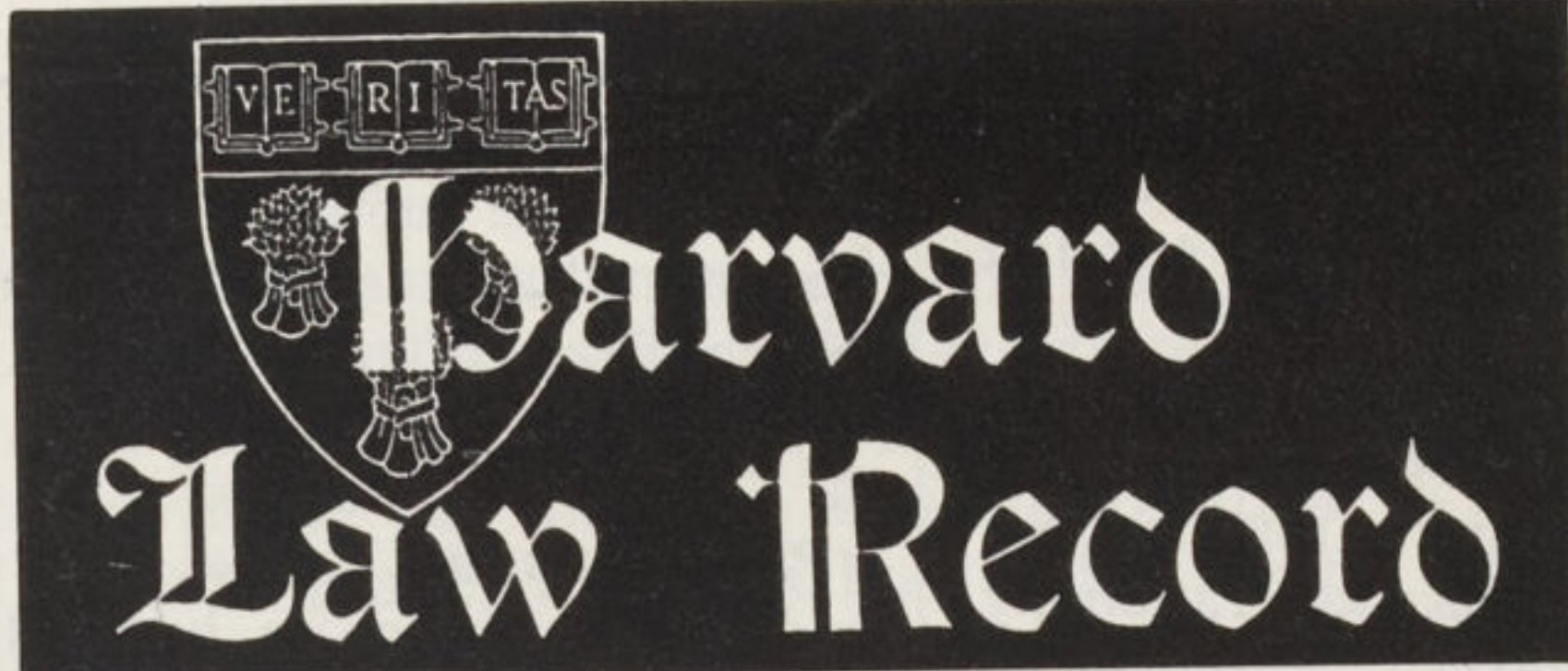




*"America's Oldest
Law School Newspaper"*

VOL. 32

CAMBRIDGE, MASS., MARCH 30, 1961

NO. 8

Ames Final April 10



Judge Miller



Justice Whittaker



Justice Kirk

By Charles F. Waite

The Honorable Charles Evans Whittaker will preside at the final round of the Ames Competition on Monday evening, April 10, when the United States Court of Appeals for the Ames Circuit convenes in the James Barr Ames Courtroom of Austin Hall.

Joining Justice Whittaker on the bench will be the Honorable Shackelford Miller, Jr., Chief Judge of the U. S. Court of Appeals for the Sixth Circuit, and the Honorable Paul G. Kirk, Justice of the Supreme Judicial Court of Massachusetts.

Appearing before the visiting jurists will be third-year courts of the Jaffe and Magruder Clubs, who will vie for the top honors

of the Ames Competition.

The case before the court will be *Great Northern Insurance Company, Inc. v. Hammond*, a direct action against an insurance company for damages for injuries suffered in a Louisiana automobile accident.

Plaintiff, a citizen of New York, sued the tortfeasor's insurance company, a Michigan corporation, in the United States District Court for the Eastern District of Wisconsin, basing his action on the Louisiana Direct Action Statute.

The action was transferred on defendant's motion to the United States District Court for the Southern District of New York for the

(Continued on Page 14)

Hearsay

In less than two weeks Adolph Eichmann will go on trial in Israel for the alleged murder of six million Jews. This is our last opportunity to ask that his life be spared.

This case has involved basic considerations of international law, morality and emotions. It has demonstrated that people, after all, see problems from their own positions and interests. For some reason, all people have found it impossible to discuss this case rationally or objectively. That is what we would like to do.

There is some question about the propriety of the procedure that was followed by Israel in obtaining jurisdiction over Eichmann. Argentina's territory was violated; and, although it accepted an apology, there is still the question of what would have been adequate reparations lacking the acceptance of that apology as a form of appeasement. Even so, it can be asked whether Israel's act was morally justified. Further, there is the question that lies behind the need to hold the trial, namely: Was this man guilty of the murders with which he is charged? Under the Anglo-American system of jurisprudence, it must be remembered, a man is innocent until proven guilty. With that presumption in mind, the remaining questions center around the fairness of the trial. A fair trial would guarantee an adequate hearing and impartial judgment even though there have been other doubtful elements behind the prospective courtroom drama. The question of the propriety of Israel to hear the case at all is still unanswered; but if she were to afford the defendant all the safeguards implicit in a democratic trial, that objection would be less forceful. Israel is to be commended for supplying Eichmann with a German lawyer and some of the evidence that is to be presented against him; she is to be chas-

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COMMENT

By Fenno

The most obvious and sensible solution to the current controversy over federal aid to private and public schools is often overlooked by commentators: no federal aid at all.

Proponents of federal aid are fond of conjuring up horrendous specters of the dire plight of our schools. Millions of little kiddies are not getting a proper education, they say. Teachers are having a hard time supporting their families of five or six children. Buildings and equipment are inadequate.

But lack of money is not even a major cause of this situation. One of the principal causes is the phony egalitarianism which is espoused by all too many superintendents: one superintendent has defined a democratic educational system as "that system which tends to draw both ends toward the middle." In other words, mediocrity is to be striven for. This type and his ilk favor life adjustment courses and oppose ability grouping and a beefed-up curriculum. Giving them more money would just be pouring money down a rat hole.

Furthermore, the teaching profession needs to clean house before it will be able to enlist much public support for higher salaries. Able teachers deserve twice what they are presently earning. But able teachers are not in the overwhelming majority. Too many college graduates go into teaching because they do not know what else to do. The overall quality of teachers being ground out by the "education" schools is appalling; they cannot speak or write proper English and they do not know the subjects they are to teach.

Nevertheless, there is money available even without resort to higher local taxes. All we need to do is to cut out the school swimming pools and gymnasiums, the huge parking lots for students' cars, excessive coaching staffs and other such expenditures which are irrelevant to education.

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Published weekly on Thursday for ten weeks of each term by THE HARVARD LAW SCHOOL RECORD CORPORATION, 23 Everett St., Cambridge 38, Massachusetts. Subscription price: \$2.00 per term, \$4.00 per year (20 issues) mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies 10c each at the Law School, 20c each mailed. Business and editorial offices, 23 Everett St., Cambridge 38, Massachusetts. Telephone UNIVERSITY 8-7600, extension 418.

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Second class postage paid at Boston, Mass.

Harkness Gains Reported

By Neil L. Chayet

The Harkness Commons Dining Hall has lost \$34,000 less this year than last, based on a March comparison of both years. This unusual saving is not due to a slashing of food quality and quantity but rather to the first year of management by Stouffer's Management Food Service, an independent firm which specializes in food planning and service for large organizations.

Although twenty-five fewer students are buying their meals on a weekly contract basis, there has been an extremely large increase of those buying their meals on an a la carte basis, which more than compensates for this drop and accounts in large amount for the fact that the Dining Hall is grossing seven per cent more than a year ago.

Last year, when the University-managed Dining Hall decided to sell meals either singly or by the week, the annual deficit increased from \$14,000 to \$57,000. For this reason the University decided to employ Stouffer's Management Food Service, which was particularly well adapted to this method of dispensing meals.

\$700 Profit Realized

During February, 1961, Stouffer's made a profit of \$700, although it is still \$5400 in the red for the entire school year thus far. In February of 1960, the University lost more than \$5200. All profits made by Stouffer's are retained by the University, Stouffer's being employed at a fixed annual rate.

Mr. Warren T. Thompson, manager of the Dining Hall for Stouffer's, hopes to institute a third line and, in the more distant future, a bakery. The present Grill will be converted into the third line and a new Grill will be opened near the unused dish disposal window at the South end of the dining area.

Casner Club Wins Two Ames Games

The second and third Ames quarter-final contests have resulted in a double victory for the Casner Club.

Last Tuesday, second-year members of the club's law court took winning honors over the

Scott Club, while on Thursday the group's equity branch edged out the Harlan-Marshall Club.

Winning oralists on Tuesday evening were Edward C. Pinkus, Hempstead, New York, and M. Laurence Popofsky, Oskaloosa, Iowa.

Thursday's winning oralists were Louis L. Hoynes, Jr., Indianapolis, Indiana, and John G. Wofford, New York, New York.

As all professors will commence their annual Spring Recess April 2, no classes will be held next week. The professors will return Monday, April 10, many of the students sometime thereafter and the RECORD, Thursday, April 20.

Cohen To Deliver Holmes Lectures

Three talks on the general topic, "The United Nations: Constitutional Developments, Growth and Possibilities," will comprise the Law School's 1961 Oliver Wendell Holmes Lectures.

Benjamin V. Cohen, S.J.D., has been selected to deliver the lecture series, to be presented April 17, 18 and 19 at 8 p. m. in the James Barr Ames Courtroom of Austin Hall.

Dr. Cohen received the Ph.B. and J.D. degrees from the University of Chicago in 1914 and 1915. The S.J.D. degree was conferred on him by Harvard in 1916, the year of his admission to the Illinois bar.

The Holmes Lectures were made possible by the income from a bequest by Justice Holmes to the Law School. As the result of a faculty decision, the income is devoted to paying the honorarium of the lecturers as well as the cost of publishing the addresses.

Former Holmes Lecturers have included Owen J. Roberts, former Justice of the United States Supreme Court; Hans Kelsen, authority on international law; Harry Shulman, Dean of the Yale Law School; and Walter V. Schaefer of the Illinois Supreme Court.

The public is invited to attend the three lectures. There will be no admission charge.

Fulton Lewis III Shows 'Operation Abolition'

By William J. Graham

Last week proved to be a busy one for Law School conservatives as the Young Americans for Freedom presented two programs.

On Wednesday the group sponsored the appearance of former House Un-American Activities Committee staff member Fulton Lewis, III, who presented the Committee's much-publicized film, "Operation Abolition." An overflow crowd jammed the Geological Lecture Room of Peabody Museum for the documentary, consisting of footage taken by San Francisco television stations of student riots which occurred when the Committee appeared in the west coast city.

Lewis said that throughout the history of the Communist conspiracy, a widely used and highly effective means of furthering the international movement's policies has been the manipulation of groups that are not basically Communist. By so doing they have been able to exert an influence much greater than their relatively small numbers would warrant. The student riots in San Francisco were an instance in which "the Party" was able to exert such an influence, he said.

On the preceding evening, the group presented Joseph Eley, President of Public Affairs Counsellors, an organization which advises businesses on current affairs, emphasizing practical politics.

Eley spoke on means by which conservative sentiment in this country can be exerted at the precinct levels. He asserted that conservatives should stop "sitting around telling each other what's wrong and get out and sell their positive virtues."

Voluntary Defenders' Officers Named

The Harvard Voluntary Defenders elected officers for the coming academic year, choosing George L. Kirklin, 2L, Baker, Oregon, as president; Byron J. Johnson, 2L, Boise, Idaho, as vice-president of operations; and Ronald F. Kehoe, 2L, Medford, Massachusetts, as vice-president of research and appeals. The new administration replaces outgoing president J. Joel Woodey, 3L, Lutherville, Maryland, and vice-presidents R. Dobie Langenkamp, 3L, Pittsburgh, Pennsylvania,

and Richard H. Morehead, 3L, Huntington, West Virginia. At the election meeting the Defenders also announced the admission of a new member, Francis Fox, 2L, Mansfield, Massachusetts.

In the near future, the new administration will conduct its first meeting, at which time next year's membership committee will be elected. Kirklin stated that shortly after the start of classes next September, competition will be held to select student members from the class of 1963. Details will be available at an opening meeting the first week of school.

New Publication Causes Interest

Making its appearance at the Law School last week was a new publication, announced to be issued "at irregular intervals by irreverent students."

Although duplicated by somewhat-less-than-professional printing methods remarkably similar to those used by the Law School's distribution center, the mimeographed *Low Review* fast became the subject of much campus discussion.

Published by the "Four Hundred Club," an unofficial organization whose only qualification for membership is an academic ranking of 400 or lower, the *Low Review* took to task in its first issue those students who spend all of their time in the study of law.

According to its introduction, the publication takes "judicial notice of non-judicial life," reads "a little nonsense into the official record," and professes to be "most sincerely concerned with a positive emphasis on aspects of life not otherwise stressed in this school."

The first issue contains an article on how to prepare for a career as a United States Senator ("no U.S. Senator from Harvard . . . has ever been Law Review") a selection of poetry ("Get out of your books and on your backs/Get some sunning and sleeping done/Light is the thing Blackacre lacks/It's a mesne lord that escheats his son"), and an analysis of accounting ("debit six of one; credit half a dozen of the other").

Although a second issue is planned, the date on which it will be published is not now known. At least the Law School has now subsidized, whether it knows it or not, a publication of the bottom as well as the top.

'Equity Revue' Called Tops

By Charles F. Waite

The entertainment highlight of the 1960-61 academic year took place last Saturday night as the Dormitory Council presented the First Annual (New Series) Law School Variety Show in Agassiz Auditorium on the Radcliffe campus.

Entitled "The Equity Revue," the production proved an ideal showcase for the diverse talents of Law School students, ably refuting the oft-repeated charge that law students know only the law.

The test of a variety production must certainly come when its first act lasts almost two hours, as was the case with the "Equity Revue" Saturday evening. That it continually held the attention of the extremely appreciative capacity crowd is a tribute to its cast and to its producer, George Kelley, 2L, Belle Harbor, New York, aided by associate producer and Dormitory Council president



The Brothers Rubin

Walter Strine, 3L, Media, Pennsylvania; directors Bill Fitzgerald, 3L, Waterbury, Connecticut, Dave Brown, 2L, Evanston, Illinois, and Miss Joan Elbaum, 2L, Forest Hills, New York; technical director Rick Glazer, 2L, Trenton, New Jersey; and assistant technical director, Miss Sue Aversa.

Although the show could be fully appreci-

ated only by a Harvard Law School audience, its very esoteria served to heighten the entertainment value for the predominantly in-group crowd.

Primarily responsible for the smooth continuity were emcees Dobie Langenkamp, 3L, Pittsburgh, Pennsylvania, and Asher Rubin, 3L (with an assist from brother Joe, 1L), Liberty, New York. At opposite poles in technique (Langenkamp deadpan, Rubin effervescent), they were equally successful in



Dorm Council Chorus

sustaining line after line of well-written and often balloon-bursting gags.

The production began with the Dorm Council Chorus dissecting "Harvard Law School," the opening song. Adding their solo work were Council president Strine; John Quarles, 3L, Wellesley Hills, Massachusetts; John Arnold, 2L, Nowata, Oklahoma; Tom Graham, 3L, Louisville, Kentucky; Perry Bascom, 3L, St. Louis, Missouri; Walt Mayo, 3L, St. Paul, Minnesota; and Walt Hartridge, 3L, Savannah, Georgia.

Tex Wyndham, 3L, Wilmington, Delaware, headed the variety acts with rousing piano-and-vocal renditions of three numbers, including a monster song from his own pen.

"The Golden Guitar of Norwood Beveridge," as it was billed, surprised nobody when it appeared on stage in the hands of Mr. Beveridge, 2L, Silver Spring, Maryland, himself. A selection of three well-executed folksongs brought an audience demand for a fourth.

(Continued on Page 8)

McCormack Defends State Officials

By John A. Rava

Massachusetts Attorney General Edward J. McCormack, Jr., speaking on civil liberties, defended the integrity of state civil servants and politicians against "a popular image of venality and corruption" before a meeting of the Law-Graduate Democratic Club.

"Nine out of every ten public officials in Massachusetts are dedicated public servants," McCormack declared. "But in this state if one is weak, the rest are considered weak." He attacked Judge Charles E. Wyzanski for "indicting and convicting every public official in the state."

Referring to the sensational hearing conducted by Wyzanski in the U. S. District



McCormack

Court on the alleged bribing of government officials by the engineering firm of Thomas Worcester, McCormack criticized the passivity of civil libertarians. Had a professor or a Communist been treated like Wyzanski treated several of the political witnesses, the civil liberties people would have rallied in protest. But when the rights of a government official are challenged, the civil libertarians sit on their hands, he declared.

McCormack stated that having a governor and attorney-general of opposite parties was a healthy thing. His office handled legal matters only, he stated, and therefore did not engage in political activities which could con-

flict with Republican Governor Volpe.

The Attorney General began his prepared address by outlining various activities of his office. Only five of the 50 lawyers on his staff are engaged in criminal work, he explained. Preparing advisory opinions, handling the legal work for state agencies and supervising charitable trusts occupy a great deal of his office's time.

A nephew of House Majority Leader John W. McCormack, the Attorney-General urged a strengthening of the Democratic Party organization in this state. "There is no single Democratic organization in this state," he declared. "It is just a group of individuals with personal followings." He suggested that the state chairman take greater control of patronage and party finances as a step toward centralizing and solidifying the party.

Chancery Chiefs Name Administrators

The Board of Directors of Chancery Club has selected five members to occupy administrative positions for the Club's expanded operations next year. Those named were Paul F. Rosenberg, 1L, West Orange, New Jersey, Steward; Brian M. Frawley, 1L, Brookline, Massachusetts, Dining Room Steward; James C. Freund, 2L, New York, New York, Bar Chairman; William E. Cumberland, 1L, Washington, D. C., Assistant Treasurer; and William J. Alexander, Jr., 1L, Thomasville, Georgia, House Manager.

Student Bar Group Elects New Slate

Stephen W. Schlissel, 2L, Long Beach, New York, was elected president of the Student Bar Association at a membership meeting held recently. Schlissel received his B.S. degree from the University of Pennsylvania in 1959.

Other officers elected for the 1961-62 academic year include vice presidents James R. McCall, 2L, Los Angeles, California, Leonard Schmolka, 1L, Long Beach, New York, and Paul Hoffman, 2L, Harrisburg, Pennsylvania; secretary-treasurer Andrew Schindell, 1L, Woodmere, New York; and A.L.S.A. representative Richard K. Blankstein, 1L, Milwaukee, Wisconsin.

Separate State for Negroes?

By Robert C. Berry

Whether the Black Muslim movement of Elijah Muhammad will bring about "something new, something which has never before been revealed," or whether it promises only "a crescent shaped pie-in-the-sky to come by-and-by," focused the Law School Forum debate last Friday evening between Malcolm X, Muhammad's chief minister and organizer, and Walter Carrington, of the NAACP and the Massachusetts State Commission Against Discrimination. Roger Fisher, professor of law, moderated the program.

The Black Muslims are a movement, restricted solely to non-whites, who demand a separate state carved from American territory, where the black man will be free of his white "slavemaster." Before a jammed Sanders Theatre crowd that included at least 200 Muslim followers, Malcolm X, the resonant-voiced adherent to Islam and Allah, warned of the wrath of God that will inevitably descend on the United States if she insists on keeping the black man in bondage.

Create Separate State

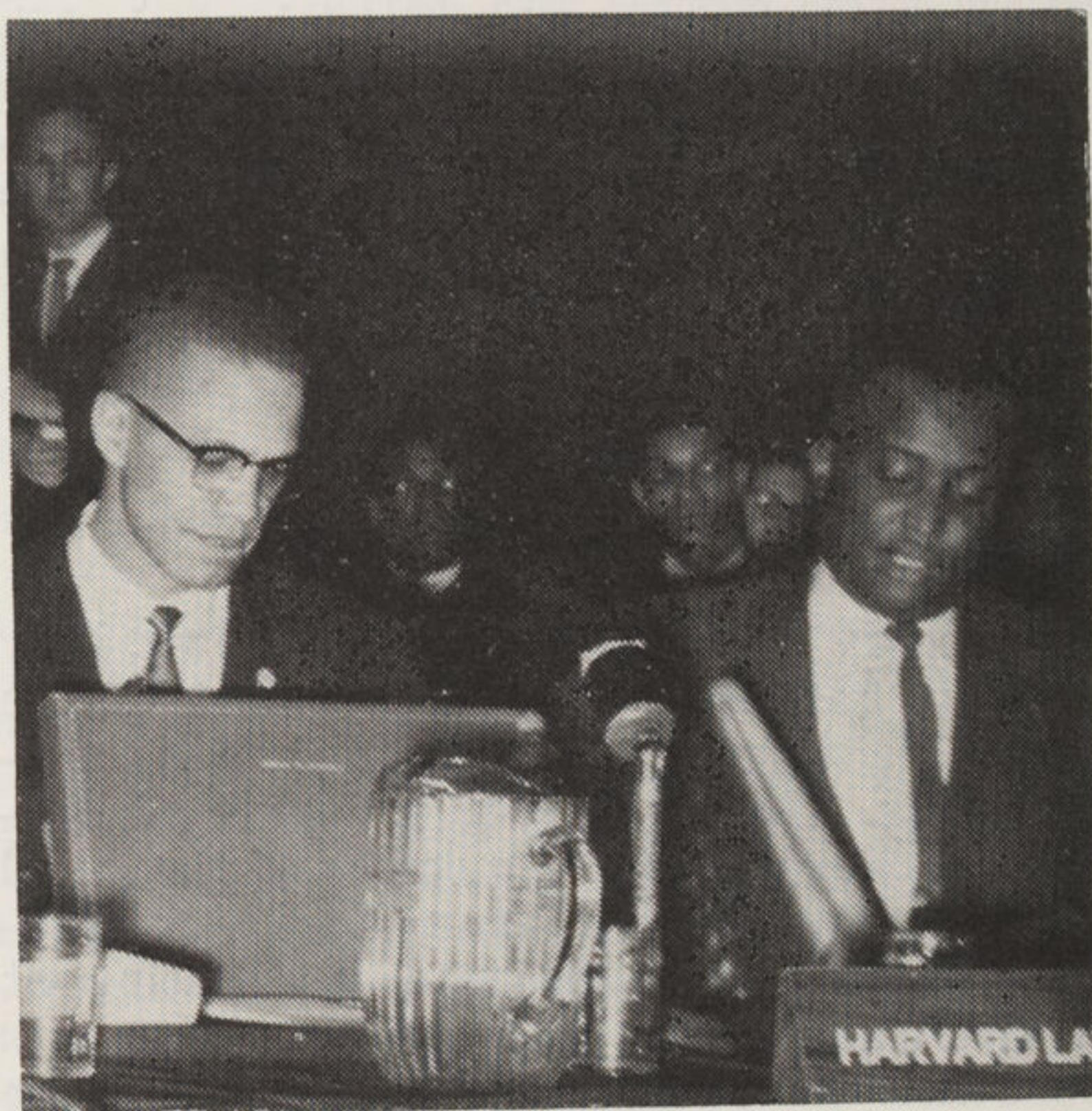
Drawing analogies to the Biblical conflict of Moses and the Pharaoh, Malcolm X demanded that the United States hew out a separate state for the black man with provisions for support for 20 to 25 years until his industry and society can gain equal but separate footing with America's. Otherwise, he warned, the curse of the Pharaohs will descend, by snow, hail and greater earthquakes yet to come.

Prompted by a question from the audience, Malcolm X said that his divine leader, Mr. Muhammad, had not designated any specific territory for the milk and honey, only that it be fertile.

"The Caucasian slavemaster does not trust us to let us leave and live elsewhere," he said. "On the other hand, he is not willing to let us live here unless we are puppets to parrot his ideas." Since neither of these will suffice, and since Mr. Muhammad wants justice for all and not just some of the "twenty million ex-slaves," he has sought recourse through the idea of a separate state within the United States.

In addition to describing his own movement, Malcolm X also took the opportunity to disparage the efforts of other groups working on the Negro problem, particularly the NAACP, accusing that organization's leaders of accepting the "thirty pieces of silver" of token integration.

Later, when the NAACP's Walter Carrington had his opportunity to speak, he replied to these charges by assuring the audience that the NAACP likewise opposes token integration and will work vigorously against any measures aimed at keeping integration within those spheres. However, he rapidly departed from any further agreement with



Malcolm X, W. Carrington

Black Muslim philosophy by declaring that the time to act is now through the gains already realized, and not by waiting for the will of Allah to intervene. He stressed equality for the Negro within the United States.

Mr. Carrington scored heavily with the Harvard audience in his quipping responses to the Black Muslim ideas. Carrington confessed that he had earlier tried to "feel out" his opponent at a dinner preceding the program to see what might be in store for him later in the evening. "I knew I was in for it," Carrington said, "when he took his coffee straight black."

Carrington discarded the idea that the

Muslim movement offered anything new. He likened it, instead, to the back-to-Africa ideas of the early American colonial days or to the Marcus Garvey movement of the 20's and 30's, the communist advocacy in the 30's, or the Moorish Scientist cult of a still later decade.

Carrington also noted how paradoxical it must seem that the greatest outside support this movement can find would be from such sources as the White Citizen's Council, from whose ranks a lawyer for the Muslims was recently recruited. "It's the best thing to happen to the Ku Klux Klan since the invention of the bedsheet," he sallied.

Professor Fisher introduced the speakers as well as moderating the program. He noted at the beginning of the evening's affair that there had been a question as to the desirability of two Negroes airing their differences in public before a predominantly white audience. But, he added, to take this attitude was like having the pilot of a crashing plane turn to the co-pilot and say, "Boy, you've got a problem!"

Democrats Elect New Officers

Gregory M. Harvey, 2L, Morristown, New Jersey, has been selected president of the Law-Graduate Democratic Club for the coming year. Harvey, a 1959 graduate of Harvard College, is also a member of the Legal Aid Society and the Casner Law Club semifinal Ames team and teaches debating at Tufts University.

Other officers elected at the meeting were John A. Rava, 1L, University City, Missouri, vice-president-treasurer; Marjorie A. Fine, 1GSAS, New York, New York, recording secretary; Thomas J. Hargadon, 2L, Waltham, Massachusetts, corresponding secretary; and Glen D. Camp, 3GSAS, Cambridge, Massachusetts, member-at-large. Four other board members will be appointed within the next week.

'Equity Revue'

(Continued from Page 5)

A devastating (as in "devastating nuclear war") impersonation of the President was presented by John Corrigan, 1L, Fall River, Massachusetts, who carried off the masquerade with appropriate "vigah." Mr. Corrigan

sounded more like the President than does the chief executive himself ("I would like to shay to you . . .").

Miss Harriet Kaufman, slinking out to the strains of Mr. Wyndham's tickled ivories, gave her all to "Songs for Daddy" and provided the only on-stage weaker sex contribution.

An *entr'acte* interview with Joe Rubin as a visiting law professor from Teutonicsville served to show that there are at least an infinite number of potential puns in the legal vocabulary.

Strine Plays Marimba

The first half of the show ended with the proper curtain act, as Council president Strine went from "Chopsticks" to Liszt's "Second Hungarian Rhapsodie" on the marimba. Strine's professional manner and a pale blue spotlight heightened the effect of an already effective number, Rodgers' "Bali H'ai."

The second act consisted entirely of "Ham-elot!", a re-run of the successful Lincoln's Inn Society Christmas Show (with a few timely changes in the dialogue). A courtroom drama with Harvard Law School on trial, the play-within-a-variety-show presented a series of musical numbers satirizing law professors and other such sacred institutions.

In addition to those also taking part in first act numbers and production, the Inn cast included Will Stratton, 3L, Englewood, New Jersey; Dick Nelson, 3L, Evanston, Illinois; Larry Silberman, 3L, Margate City, New Jersey; Don Bain, 3L, Denver, Colorado; Jerry Stern, 3L, Memphis, Tennessee; Sam Bartlett, 3L, Dedham, Massachusetts; Al Purrington, 3L, Raleigh, North Carolina; Jay Greer, 3L, Mt. Kisco, New York; Moe Brooke, 3L, Reading, Pennsylvania; George Daly, 3L, Columbia, Mississippi; Al Leahy, 3L, Cambridge, Massachusetts; and Austin Frum, 3L, Shaker Heights, Ohio.

Director of promotion and sales for the production was Dave Patzman, 1L, Kansas City, Missouri. Mike Goodman, 2L, Chicago, Illinois, had some unspecified duty.

Yearbook Almost Viable

The staff for the 1961 Harvard Law School Yearbook announced this week that the new edition will be ready shortly after Spring Vacation. The time and dates of distribution will be announced later.

FEATURES SECTION

The Rule of Law in World Affairs

By Justice William O. Douglas

Tennyson wrote of the time when "the battle-flags were furl'd in the Parliament of man, the Federation of the World." There have been several times since those lines were penned when some had the notion that we were on the edge of having a full-fledged world parliament. The illusion always was dispelled; and cynics rested more secure than ever in the smugness of their brand of nationalism. Yet the world has made greater progress than we are prone to think in developing important parts of the framework of a world system of law.

We have had in this country among legal circles a narrow, limited view of law. Several generations of lawyers have been influenced by John Austin and his book, *Province of Jurisprudence Determined*, first published in 1832, where law in the strict sense was defined as the body of rules enforced by a sovereign state. World law, in that view, requires a full-fledged super-state in which all nations are merged—a supranational organization that has political and military control over all of its units. Under this view world government would require perhaps a more centralized organization than that proposed by Grenvill Clark and Louis B. Sohn in their important book, *World Peace Through World Law*. Yet, as Roscoe Pound observed in a chapter in Northrop's *Ideological Differences and World Order*, "all states need not be merged in a great world state, in which their

personality is lost, in order that their conduct may be inquired into and ordered by authority of a world legal order." Moreover, the true gauge of law is not command but conduct. Those who move to the measured beat of custom, mores, or community or world mandates are obeying law in a real and vivid sense of the term.

The United Nations is today the expression of world opinion that the cult or regime of force must be replaced by a measure of world law. The United Nations has a far greater prestige and stature, I think, than it could have been expected to acquire in such a short period since its formation. Love and the instinct for preservation of life—these are even deeper in man's character than violence.

The physicists have told us how obsolete the cult of force, armed with nuclear weapons, has become. We are told that there will be at least fifteen nations producing nuclear weapons in the 1960's, including Red China. What are the chances that there will be a nuclear war? A military analyst says that during the next ten years the chances of a nuclear conflict, based either on diplomatic miscalculations or on a limited war's becoming an all-out war, are 50-50. Diplomatic miscalculations and the spread of a limited war are only two of several factors. What about accidents in defense systems such as false radar readings, faulty intelligence, misinterpretations of military orders, and the like? What about human errors, such as aberrant bombers or missiles, irresponsible commanders, or sabotage from within our own ranks? When atomic bombs, as a result of new discoveries, get into "the ten dollar" class, what international gangster will be without one? What Hitler will appear with mad dreams? What adventurer will

think he may be able to pull it off so that he in truth runs the world? What leader with cold calculation may be willing to sacrifice twenty, forty, sixty, eighty, a hundred million, or even more of his own people to gain leverage on the whole world through a sudden nuclear attack?

We are told of new dangers by such experts as Dr. Abel Wolman of Johns Hopkins, who in his 1959 testimony before Congress showed that even peaceful use of nuclear energy poses staggering problems. As of 1959 we in this country had 65 million gallons of high activity radioactive water in storage. By 1980 he estimates that these by-products of the peaceful use of nuclear energy will amount to from one to three hundred million gallons. These wastes cannot be detected by human taste or odor. Their life is long—perhaps a thousand years, perhaps longer. Failure to control what we store today may lead to vast human disasters next year, a hundred years hence, or in the far distant centuries. As Dr. Wolman testified, the problem "will require a deep governmental supervision, a very long, continued, and uninterrupted supervision over the fate and location of these materials." As of 1960 no nation in the world has found a solution to disposal of these high level radioactive wastes. What is the amount other nations have stored? What will the world total be in 1980? We do not know. But we do know this is a problem the international community shares. Plainly, international regulatory action will soon be necessary.

Another force, though of lesser proportions, is at work bringing the nations together. We witness in this half of the century a great emergence of new nations. Centuries of colonialism have ended; nations or races long subjugated by outside regimes are gaining their

This article is an excerpt from a paper which grew out of discussions held in August, 1960, by the Center for the Study of Democratic Institutions, for which Justice Douglas is a consultant. The paper itself has been published by the Center and can be obtained by writing to Box 4068, Santa Barbara, California.

independence. They are weak, inexperienced, fragile. They came into their inheritances at a time when world forces are aligned into powerful blocs that might make these new countries pawns in the old game of power politics. Moreover, none wants to become either a puppet of an imperialistic regime or a Communist satellite. If independence is to be kept, as well as achieved, they must have a refuge, a sanctuary where they can feel secure. The United Nations satisfies that craving for security. And its early success in the Congo, in protecting the new nation from the internal machinations of foreign powers, dramatized its usefulness as nothing else at this juncture of history could do.

One handicap of the United Nations today is that it excludes groups that should be included. Red China is still excluded. Yet Red China, in which nearly a fourth of the people of the world live, is apparently more than a transitory government. She is established more firmly than a mere de facto regime. We can assume she will have her own atomic warheads before long. Meanwhile she is an obstreperous, aggressive nation. Her tactics against India have added up to calculated aggression. Her tactics against Tibet have exceeded in ruthlessness and cruelty the actions of Russia in Hungary.

These Tibetan and Indian ventures on the part of Red China make her an outlaw in any accurate use of the word. Being an outlaw may seem in logic to be a reason

for barring her from the United Nations. But in reality how can an outlaw be kept outside the United Nations and yet disciplined by it? There is today no tribunal to which Red China can be made to account. There is no assembly or council before which she can be summoned.

Cold practicalities make admission of Red China necessary, accompanied, of course, by a settlement of the many tangled but pressing problems between this country and Red China. What about the Americans held as prisoners by Peiping? What about the Korean and Vietnam situations, and Formosa? The peace of the world may soon turn on them. In any event, a United Nations that is such in fact must be able to bring its influence to bear on all world problems that affect the peace or that impair the integrity of nations. Today, we can say no more than that the United Nations is a form emerging from the mists. What shape it will have in the bright hours of man's maturity we do not yet know. It is, however, real, vivid, and effective in providing some instruments of international law. The United Nations has weathered stormy seas.

The United Nations action in Korea was the first time the outlawry of aggression was implemented by direct, military action by the community of nations. The Soviets soon denounced the United Nations police action in Korea as "war"—a "war" that the United States inspired and conducted under the cloak of the United Nations.

Eisenhower, in his campaign speech of September 4, 1952, gave ammunition to the Soviets. He too called the police action in Korea a "war." The expediency of American politics caused the vital distinction between United Nations "police action" and "war" to become blurred and confused. We stepped backwards, retreating temporarily from the principal decision that "aggressive war" called for world action against the aggressor.

Since those days we have regained some of the lost ground. On November 2, 1956, the General Assembly voted 64 to 5 for a ceasefire on the actions undertaken against Egypt. Later that month it created an international command force of the United Nations to supervise the cessation of hostilities; and in a matter of a few days hostilities ceased.

When the Republic of the Congo asked for help from the United Nations to maintain its government from the machinations of a foreign power, and when, in response, the Security Council on July 13, 1960, resolved to extend that aid, the principle of the independence of nations was strengthened. The action of the United Nations in the Congo plus the defeat of Soviet efforts to sabotage it and capitalize on the disorder and chaos have brought United Nations prestige

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to a new high. There is warrant for the optimism that its growing achievements presage a new period of growth for effective international law.

An even broader advance in international law is needed. It was broached by President Eisenhower in his address to the United Nations Assembly on September 22, 1960. Referring to the African situation in particular, he emphasized five points:

"Non-interference in the African countries' internal affairs . . . Help in assuring their security without wasteful and dangerous competition in armaments . . . Emergency aid in Congo . . . International assistance in shaping long term African development programs . . . United Nations aid for education."

As the world is evolving, there are few, if any, nations that can go it alone. None is an isolated, insulated unit. Sovereignty may in theory be entirely in local hands,

yet the very need for raw materials or food or loans or technicians from abroad creates a dependency on other nations. There are not many examples of self-sufficiency, as our own economy illustrates. The dependency of nations on each other is developing international collectivism in myriad forms.

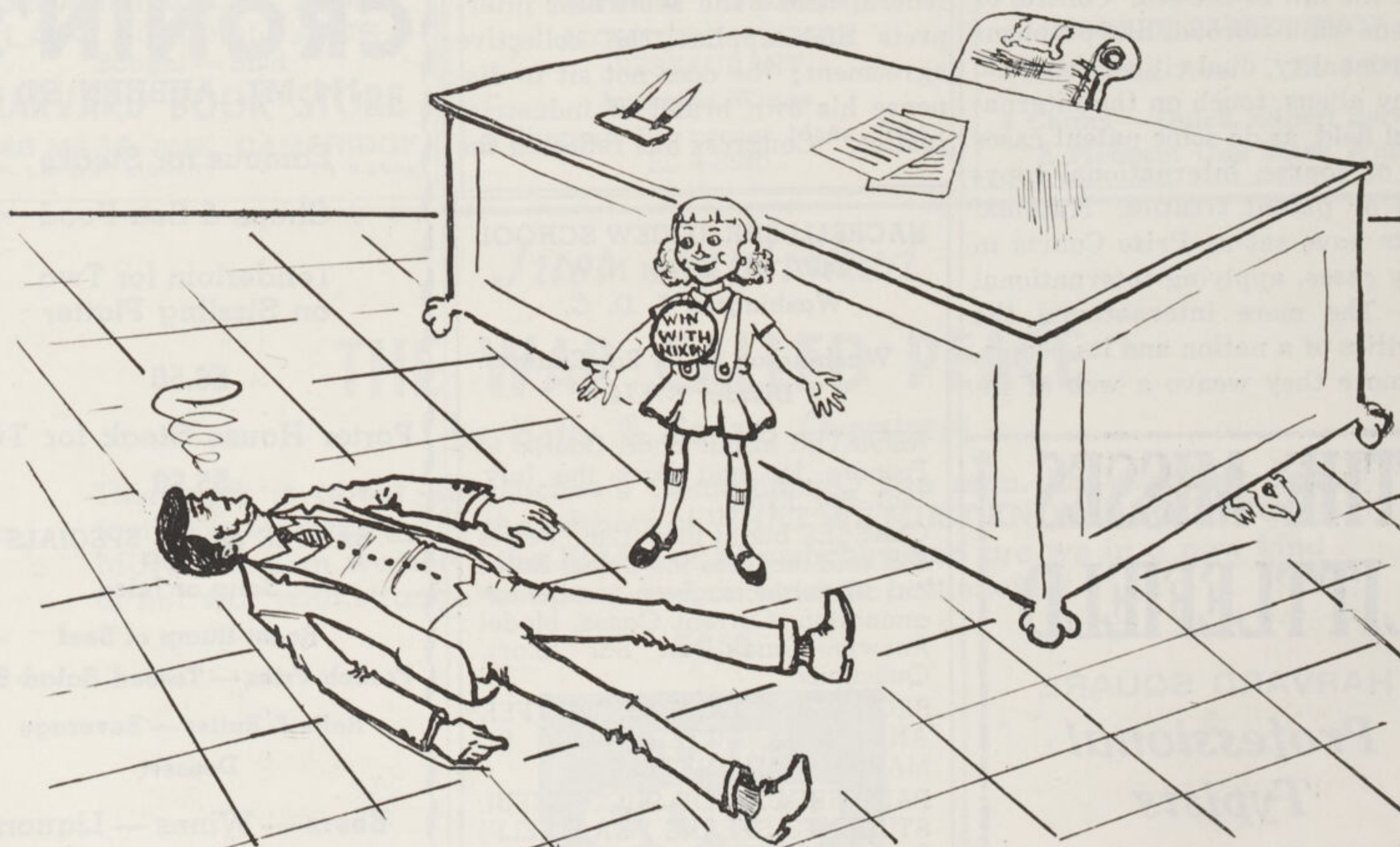
The recent achievement of the International Bank of Reconstruction and Development, headed by Eugene Black, in settling the Indus River dispute between Pakistan and India is international law in operation. The process was not adjudication or legislation, the procedures we normally identify with "law." This was mediation and conciliation at a high level, procedures that have been constituent parts of our own domestic legal system for years.

Whenever nations work together through a common agency, they submit to a regime of international law. The European countries and the South American countries

which have established common markets work conspicuously in the role of supranational groups. When the Inner Six and Outer Seven conduct business, a rule of law that is international in character moves into operation.

There is a rather unusual international agency that was established in 1954 and known as the International Control Commission. It was created by the Geneva Conference at which France and the People's Army of Vietnam agreed on a cessation of hostilities. The International Control Commission was composed of members from Canada, India and Poland. It served an important function in supervising the end of the war in Vietnam. It—or another agency like it—could be asked to mediate an end to other civil wars. Its usefulness in situations such as Laos presented in the winter of 1960 was obvious. Laos, closer to China than Cuba is to us, is an inflammatory situation. If it is anything other

Commentaries



April Fool, Daddy.

than a neutral nation, it will create endless friction. Canada, England and India were anxious for the International Control Commission to mediate the Laos situation in the fall of 1960. Eisenhower's State Department and Pentagon were against it. Millions were poured into Laos in an effort to make it a pro-Western beachhead. Power politics were again substituted for a rule of law.

Not all agencies applying or enforcing international law are international agencies. Our courts, like courts of other nations, have long construed, applied, and even formulated international law in a myriad of situations. International law as expressed in conventions agreed to by several nations is enforced. As stated in *Ex parte Quirin*, 317 U.S. 1, 27-28, "the law of war" enforced by our courts includes "that part of the law of nations which prescribes, for the conduct of war, the status, rights, and duties of enemy nations as well as of enemy individuals." The rights of aliens may be founded in international custom, as well as in treaties. Maritime controversies involve the law of the sea. Control of citizens while abroad, like problems of nationality, dual citizenship, and enemy aliens, touch on the international field, as do some patent cases and, of course, international copyright or patent treaties. National courts have sat as Prize Courts in many cases, applying international law. The more international the activities of a nation and its people, the more they weave a web of in-

ternational practice, custom and law.

There are of course many tribunals of an international character which apply a rule of law in a supranational manner. The Court of Justice of the European Coal and Steel Community is one of many. *Ad hoc* arbitral tribunals have been commonly used. The activities of these tribunals have been numerous since the mid-seventeenth century. Arbitration is not mediation or conciliation but a determination according to law. As stated by Judge Joseph C. Hutcheson in *Ryan v. United States*,¹ sitting as arbitrator of a claim against the United States, "In this proceeding, therefore, the function and duties of the Arbitrator are those of the judge, not those of the mediator; the methods and processes of decision judicial, not mediatorial. The scope and sweep of the inquiry and search into the facts and the law, must therefore be as wide and as free as, but no wider nor freer than, judicial methods and processes permit and enjoin." This comports with the notion of arbitration under collective bargaining agreements in the federal field. The arbitrator interprets and applies the collective agreement; "he does not sit to dispense his own brand of industrial justice." Congress has reflected the

growing faith in the ability of arbitrators to perform judicial functions by permitting provisions for arbitration in transactions which are maritime or involve commerce.

Conflicts between one nation and foreign investors are recurring ones. The United Nations and its various agencies, including an International Law Commission, have a variety of projects under way in an effort to put this controversial subject under a rule of law. We now have special procedures prescribed for the settlement of controversies between states in this hemisphere. Sending the marines to the Caribbean or Central America was once the solution. Today we are closer to a rule of law in the management of troublesome problems in this area. The Charter of the Organization of American States provides that all international disputes between the American States shall be submitted to certain "peaceful procedures" before being referred to the Security Council of the United Nations.

The European Convention for the Protection of Human Rights

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and Fundamental Freedoms creates a more selective administrative and juridical system. The Convention establishes a bill of rights for nationals of the member nations. It protects a wide range of human rights.

The Convention establishes a Commission of Human Rights which may receive complaints from individuals or groups or from member nations. It deals with complaints only "after all domestic remedies have been exhausted." It makes an investigation and seeks to secure "a friendly settlement" on the basis of the rights defined in the Convention. If it is unable to effect a settlement, it reports the matter to the Committee of Ministers.

In that event the matter can be submitted to the European Court of Human Rights created by the Convention. Its rulings on the merits involve construction of the provisions of the Convention. Its judgments are final. This Convention, designed to enforce human rights as between nations having "a common heritage of political traditions, ideals, freedom, and the

rule of law," places a new and important field under international management.

The International Court of Justice, created by the United Nations, also has a permanent status; but it has a different kind of jurisdiction from that of the European Court of Human Rights. It decides actual controversies; and, unlike the United States Supreme Court, it has the authority to render advisory opinions. Yet only states (not individuals) may be parties before the International Court of Justice. The disputes with which the Court deals concern the interpretation of treaties, any question of international law, and the breach of an international obligation, together with the nature and extent of the reparation to be made for such a breach.

Yet in spite of the easy availability of the International Court and its eminent qualifications, it had last year only six cases to adjudicate. Low as this number is, it is the highest number the Court has had before it in any one year in a decade. Most nations give only qualified acceptances to its juris-

diction. In 1946, by adoption of the Connally Amendment, we accepted compulsory jurisdiction except as to "matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America." The amendment was attacked as a dangerous precedent to a country seeking to sponsor the rule of law. Senator Wayne Morse said: "It is, in effect, a political veto on questions of a judicial character, and it will be instantly recognized as such by all the other countries."

This "political veto" cuts both ways: the United States can accept or reject any decision against it; on the basis of reciprocity a state which the United States wants to sue can claim in return that the International Court has no jurisdiction. In the case concerning *Norwegian Loans*, *I.C.J.Rep.* 1957, 9, bonds had been issued by Norwegian state-owned banks and sold on the French bond market. These bonds contained "gold clauses," and France and Norway had had long but futile discussions on a diplomatic level as to the effect of

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these clauses. France finally sought to submit the dispute to the International Court of Justice. Norway objected to the jurisdiction of the Court because, in its opinion, the bonds presented a matter of municipal, and not international, law. The Court stated:

"France has limited her acceptance of the compulsory jurisdiction of the Court by excluding beforehand disputes 'relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic.' In accordance with the condition of reciprocity to which acceptance of the compulsory jurisdiction is made subject in both Declarations and which is provided for in Article 36, paragraph 3, of the Statute, Norway, equally with France, is entitled to except from the compulsory jurisdiction of the Court disputes understood by Norway to be essentially within its national jurisdiction."

As Professor Louis B. Sohn recently observed: "... the narrowness of the United States' jurisdictional declaration constitutes an important obstacle to effective protection of American trade and business abroad. As matters pertaining to the treat-

ment of American investments in foreign countries can be easily considered as being essentially within the jurisdiction of those countries, any claims brought by the United States on behalf of injured American investors are likely to founder on a rock of our own making."

The tools with which we can evolve a "rule of law" into a more mature system are at hand. There is only the will to use them. Why do nations hold back? Why are we not willing to take the lead in inaugurating a truly golden age for international law? We could, I think, do it, if we asserted the moral leadership of which we so often boast. World opinion is ready to be marshaled. Small nations quiver on the sidelines as they watch giant rivals spar, threaten, and shake their nuclear fists. The world is filled with such a sense of insecurity that for the first time in history solid foundations for a "rule of law" can be laid.

Even for Communists the cult of force is fast becoming obsolete. Khrushchev knows it, as evident from his Bucharest speech in June, 1960, in which he concluded that war with non-Communist nations was not "inevitable."

There are of course great gulfs between the law, customs, and mores which we of the West accept as normal and which other parts of the world practice. One of our major errors, as we emerged from a century and a half of isolationism, was to think of the world as if it were made in our image; at times we even thought that the non-conformists should be remade in our image. The advanced form of democracy which we enjoy is largely unknown in the world. Many societies developed along family lines, not community lines. Familial, not democratic, regimes have shaped the affairs of many Asian countries for centuries.

There are great diversities among nations. The dictatorships of the Communist world as opposed to the democracies of the West mark only some of the differences. There are absolute monarchies, dictatorships that have been long and enduring, military regimes that may be short interregnums, and democracies at various stages of development. Capitalism, socialism, communism, compete for followers. The goals and ideals are many and diverse.

Much of the world is illiterate. Across the Middle East, Africa, and

Ames Final

(Continued from Page 1)

convenience of parties and witnesses.

Plaintiff contends that the transfer was improper, but that in any event the transferee court should apply the law that would have been applied had the action remained in the transferor court.

Defendant argues that New York law should apply and that the action should be dismissed.

The District Court held that the action would not be remanded to the Eastern District of Wisconsin, but held also that the complaint did state a claim.

Both parties took interlocutory appeals to the Court of Appeals for the Second Circuit, the tribunal which the Ames jurists will "constitute" on April 10.

Arguing for the Jaffe Club will be Charles C. Collins, Jr., Ridgewood, New Jersey, and

Thomas A. Skornia, Wheaton, Illinois. Participating on the brief are Thomas F. Field, Wilmington, Delaware; A. Remy Fransen, Jr., New Orleans, Louisiana; R. Timothy Hanlon, Maplewood, Missouri; David C. Weisberg, Cambridge, Massachusetts; Jack C. Wood, Franklin, Indiana; and Charles M. Wyndham, III, Wilmington, Delaware.

Oralists for the Magruder Club are Thomas G. Conway, Kingston, New York, and John M. Wisdom, Jr., New Orleans, Louisiana. Participating on the brief are Miss Jacqueline Crawford, Ridgewood, New Jersey; Richard I. Burnham, Cooks Falls, New York; Garret A. Hobart, IV, New York, New York; Edward C. Leckey, Johnstown, Pennsylvania; Sheldon R. Shapiro, Malden, Massachusetts; and Herman Wilson, Tyler, Texas.

The argument will take place at 8 p. m. All law students are urged to attend this last and most important of the year's Ames arguments.

Asia, illiteracy is the rule. Leaders in these countries must make bricks without straws. The question is not, will democracy be saved? It is, will democracy ever be born? If democracy emerges in the hinterland, it will be in the distant future.

The vast gulfs that exist between various world cultures mean that the common ground for world law will be narrow and selective. It starts, of course, with the rule against aggressive war; and it proceeds from there to all the stuff which treaties, contracts, commercial engagements, investments, travel, communication, and the like shape up into controversies. There are only limited areas where today we can rightfully say common ground can be found. Yet they are important, indeed critical, ones; and they will expand as the peoples of the world work with their newly emerging institutions of law and gain confidence in them.

Some have the lingering notion that wars without nuclear weapons can be fought—if only nuclear weapons are abolished. That is dangerous thinking. Now that the art of making them is known, they could be quickly manufactured even

though all were destroyed. They are so strategically important that they would tempt any participant. Once war broke out, a frantic race would be on to manufacture again the outlawed nuclear weapons. The side that won that race would have the opponent at its mercy.

The central problem of this day is the prevention of war. Effective prevention of war means disarmament. Partial disarmament is a sham except insofar as it leads to the establishment of procedures which can be extended to full disarmament. The danger of partial disarmament is that each side aims to keep the weapon—or weapons—that best suits its strategic position. Russia, for example, would gladly trade atomic bombs for tanks, since with tanks she could still dominate the land mass of which she is the center. Pursuit of peace at this stage means making the search for fool-proof disarmament the first item on the international agenda.

The arrival of disarmament and the end of war would not of course mean the advent of peace in the sense that there would be a disappearance of conflict. Great antagonisms would persist. War from

time out of mind has been one of the remedies for real or fancied wrongs. Now that it is obsolete, the rule of law remains as the only alternative. This is not an expression of hope alone. We have in truth the sturdy roots of a rule of law, including a few of the procedures which human ingenuity has devised for resolving disputes, including conciliation and mediation, arbitration, administrative settlement and judicial determination. The rule of law has at long last become indispensable for men as well as for nations. Now that the instruments of destruction have become so awesome that war can no longer be tolerated, the rule of law is our only alternative to mass destruction.

¹ 32 *American Journal of International Law* 593, 595.

² Sohn, "International Tribunals: Past, Present and Future," 46 *American Bar Journal* 23, 25.

— HEARSAY —

(Continued from Page 2)

tised for her handling of some of the other details of the situation, mainly for her selection of judges who were refugees and for the publicity techniques which are involved. These questions should be answered with a view to objectivity and to their international ramifications rather than with impassioned arguments.

But assuming that all of our requests for objectivity have been satisfied and that Israel still finds Eichmann guilty, we question the necessity of the death penalty in this case. Israel extends the death penalty *only* to the crimes with which Eichmann is charged. Man's desire for vengeance is instinctively strong. But that is not sufficient reason to have this man die. If it were, revenge would replace law. The only other possible purposes in imposing the death penalty would be either that of eliminating this man from the earth or that of inflicting serious punishment on him in the hope of deterring others. The effect of the death penalty as to deterrence, especially for such a crime as this, has been seriously questioned. There is nothing to be gained from wiping Eichmann off the face of the earth because he will never again be in a position to repeat his heinous crimes or to influence others along similar lines. Life will be a sufficient punishment. Thus, we feel, Eichmann should be given a life sentence. By so sentencing him, Israel would win the respect both of her fellow countries in the league of nations and of the citizens of those countries.

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A. Searle Pinney, Esq., Sherwood, Hull and Pinney, 26 West Street, Danbury, Connecticut. This firm has an opening for the summer. Interested students should get in touch with Mr. Pinney so that interviews can be arranged.

Richard Katcher, Esq., Ulmer, Berne, Laronge, Glickman and Curtis, 1130 Keith Building, Cleveland 15, Ohio. This firm is interested in hiring a prospective graduate who is interested in specializing in taxation. Interested students should write to Mr. Katcher and enclose a resume.

The Food Law Institute, Inc., New York University Law Center, New York City. The Institute is accepting applications for fellowships for 1961-62. Students interested in these fellowships should see Assistant Dean Wil-

liam L. Bruce and Professor Robert Keeton.

Louis Kunin, Esq., 165 Broadway, New York City. Mr. Kunin invites third-year students who expect to be in New York investigating opportunities during the Spring Recess to arrange an appointment with him. Mr. Kunin serves voluntarily as the Appointments Officer of the Harvard Law School Association. His telephone number is DIgby 9-2930.

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Louis Kunin, Esq., 165 Broadway, New York City. Students who expect to be in New York looking for summer jobs during the Spring Recess are advised to telephone Mr. Kunin, the Appointments Officer of the Har-

vard Law School Association of New York City, for leads. His telephone number is DIgby 9-2930.

Florian J. Bartosic, Esq., House Counsel of the International Brotherhood of Teamsters, 25 Louisiana Avenue N.W., Washington 1, D. C. Mr. Bartosic's office is interested in employing a student for the summer who has taken a Labor Law course. Interested students should send resumes to Mr. Bartosic.

William W. Hancock, Esq., Assistant General Counsel, Department of the Air Force, Washington 25, D. C. Students who are interested should direct letters of application, which should include biographical and academic summaries and the names of several references, to Mr. Hancock.

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