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TEN CENTS

Stassen Urges Coexistence As Alternate to Annihilation

A United States foreign policy based upon "safeguarded, competitive coexistence" was urged by Harold E. Stassen, former governor of Minnesota and currently a candidate for the same office in Pennsylvania, at last Friday evening's Law School Forum in Sanders Theater. Mr. Stassen announced to the crowd of nearly five hundred that he intended to continue a series of discussions on American foreign policy in order to formulate a new approach to the problems of the "space-atomic age." The former Special Assistant to the President for Disarmament was introduced by John

the control of this agency inspection posts in the U.S. and U.S.S.R. equipped with instruments able to detect nuclear explosions or rocket launchings; third, suspend nuclear tests for two years; and, last, enter into negotiations during the two year period for a more lasting arrangement.

The first step toward these goals should come at a Summit Conference, (See STASSEN on page four)



Harold E. Stassen

M. Maguire, Royall Professor of Law, Emeritus.

Mr. Stassen explained that his proposed foreign policy would rest upon coexistence because mutual survival was preferable to "mutual annihilation beyond description"; this coexistence must be safeguarded because the Soviet leaders do not have the same moral standards as our own; and finally, that competition was necessary because Russian communism is not going to suffer an internal collapse.

He presented four proposals which ought to be carried out in order to achieve a new dimension in foreign policy; first, establish a United Nations agency to inspect and supervise arms control; second, set up under

Disbarment Study Published by ABA

Results of the first national survey of disciplinary action in the legal profession appears in the February issue of the *American Bar Association Journal*. Tabulations by the Association's Survey of the Legal Profession list the number of attorneys disbarred, suspended, reinstated, or who resigned during the periods September 1, 1955-August 31, 1956, and September 1, 1956-August 31, 1957. The latter totals represent every state in the Union with the exception of Georgia, which has failed to supply information on its disciplinary actions.

The survey was published as part of an article (The Client's Security Fund: "A Debt of Honor Owed by the Profession") by Reginald Heber Smith, LL.B. '14, a Boston attorney who is director of the Survey. Mr. Smith urged the establishment of a fund in this country similar to the Client's Security Fund in England. Such a fund is voluntarily established by the legal profession to reimburse clients whose attorneys have misappropriated funds. A great difficulty in the implementation of such a plan, Mr. Heber complained, is the lack of authentic data on the risks which a surety would face if he were to write a bond covering the whole Bar in a given city or state.

The new tabulation will contribute greatly toward the realization of more accurate knowledge of the difficulties (See DISBARMENT on page four)

Sohn Speaks

Professor Louis B. Sohn will address The International Law Club at 5 p.m. today in the Wheeler Room of Holmes Hall. Professor Sohn will discuss "Bibliographical Material for United Nations Legal Studies." This speech will lay the groundwork for next year's International Law Moot Court Competition.

Crowded Conflicts Is First Elective

Registration figures for the spring semester reveal that Conflict of Laws tops the list in number of students taking a second semester, third year course, according to Miss Margaret Quinn, Assistant Secretary of the Law School. A total of 219 persons are taking the course.

A close second is Collective Bargaining with 185 electing the course. Third place goes to Trial Practice which has a total of 136 students. (Trial Practice was, however, the most heavily demanded course of the spring semester, as 270 students sought places in it. But only 136 were accepted.)

The only other third year course to top the 100-student mark was Equitable Remedies at 115. Other figures showed that no single course was populated by what can be described as a friendly, small, close group. The smallest class in size is Domestic Relations B with 58 persons.

Seminars, however, generally retained their customary small size. The average for 23 seminars is 16 students per class. But they vary in size from 30 in Planning and Counseling for the Closed Corporation down to 1 graduate student in Comparative Public Law: Problems in Administrative Law.

Other high registration seminars include: Taxation: Current Issues and Problems (27); International Tax Research (27, but predominately special students in addition to only 1 third year student); Antitrust (23); and The Bill of Rights and the 14th Amendment (23). Real Estate Transactions and Medico-Legal Problems each had 22. Jurisprudence followed with 21.

Seminars given in the International Legal Studies division attracted many graduate students.

Bull & Bears Hear Stretch

The outlook for uranium mining and milling and for the growth of nuclear power is outstandingly good, David Stretch, LL.B. '33, Executive Vice President of the Atlas Corporation, told the Bull and Bear Club on Friday, February 28.

Mr. Stretch, whose investment trust firm is one of the leaders in the uranium field, forecasts that by 1975 almost all newly-built plants producing electric power will be nuclear powered and that almost certainly the Navy will be nearing the end of a complete changeover to nuclear propulsion. Already there are more than 100 civilian and military nuclear reactors in operation or under construction, the first step toward the economic production of fission power.

Target Year

According to Mr. Stretch, 1968 is the target year for the development of nuclear facilities which will produce electric power at a cost competitive with the means presently used. England, for instance, is strongly committed to a change over in her production of electric power to modern atomic methods.

Mr. Stretch said that the rapid growth in the use of power per capita plus the explosive population surge evident in the United States as well as the rest of the world will make development of nuclear power a necessity, pointing out that we are out-

(See URANIUM on page four)

Byse Discusses Richard A. Mack And Power to Fire Administrators

Asked at his press conference last week whether he planned to discharge FCC Commissioner Richard A. Mack, President Eisenhower replied, "The only function of the President in a thing of this kind is to appoint the man, and he is appointed to a term and the only way he can be removed is for cause, so therefore I assume there would be a trial of some kind."

Mr. Mack, under heavy pressure from many sources, resigned his position on Monday. The RECORD requested Professor Clark Byse to comment upon the legal problems which should have been faced had Mr. Mack continued his refusal to resign, with reference to the President's statement concerning the matter. Professor Byse replied:

"The two leading Supreme Court cases on the power of the President to remove federal officials are *Myers v. United States*, 272 U.S. 52 (1926), and *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). The statute in the *Myers* case provided, 'Postmasters . . . shall be appointed



Clark Byse

and may be removed by the President by and with the advice and consent of the Senate and shall hold their offices for four years unless sooner removed or suspended or removed according to

Frankfurter Will Preside At Final Ames Argument

Felix Frankfurter, LL.B. '06 *cum laude*, Associate Justice of the United States Supreme Court, John J. Parker, Chief Judge of the Court of Appeals for the 4th Circuit and Robert B. Williamson, LL.B. '23, Chief Justice of the Supreme Judicial Court of Maine have accepted invitations from Vice Dean Livingston Hall to judge the finals of the Ames Competition on Friday evening, March 21.

Justice Frankfurter, who will serve as Chief Justice, was appointed to the Supreme Court by President Roosevelt in 1939. The 75-year-old jurist has gained a reputation as one of the most brilliant and controversial opinion writers of modern times.

Judge Parker received his LL.B. from the University of North Carolina Law School in 1908. He was ap-

pointed to the Court of Appeals for the 4th Circuit by President Coolidge in 1925. He was subsequently nominated to the United States Su-



Felix Frankfurter

Mrs. Roosevelt Talks on USSR

Tomorrow evening Mrs. Eleanor Roosevelt will address the Harvard Law School Forum on the topic of "Russia Today." Vice Dean Livingston Hall will introduce the speaker. The program is scheduled for 8:30 p.m. in the New Lecture Hall.

Mrs. Roosevelt has recently returned from Russia where she toured extensively and interviewed Communist Party Secretary Nikita Khrushchev. She has been a noted traveler since her widely publicized trips to war zones during World War II.

Although the former first lady now lists her occupation as journalist, she has been most active in international politics in recent years. She was a delegate to the first General Assembly of the United Nations in 1945 and has also represented this country at the Fourth and Seventh General Assemblies. She was chairman of the Commission on Human Rights of the Economic and Social Council of the UN in 1946 and is still active in current UN affairs. Mrs. Roosevelt has also continued her participation in national politics with her activities in Democratic Party affairs.

She has written several books including *If You Ask Me* and *This I Remember* and is currently authoring a syndicated newspaper column and writing occasionally for national magazines.

Tickets for this forum may be purchased for 95c at the Forum's office at 23 Everett Street in Cambridge or at the door.

preme Court by President Hoover but was refused confirmation by the Senate, primarily because of the strong opposition of organized labor stemming from his opinion in the *Red jacket* case, enforcing a "yellow dog" contract.

Justice Williamson was a leading lawyer in Maine before being appointed to the State's Supreme Judicial Court in 1949. It is significant that he was appointed to the Court by a Republican governor and selected Chief Justice by Governor Edmund S. Muskie, a Democrat.

Justice Williamson is the president of the Harvard Law School Association of Maine, and national vice president of the Harvard Law School Association.

Cases Jamming Federal Courts

The average (median) time necessary to dispose of a civil case in a Federal District Court today is 14.2 months. But the figure varies widely throughout the country. This was pointed out last week by Bernard G. Segal, chairman of the committee on the federal judiciary of the American Bar Association in a speech delivered in Atlanta, Georgia.

The most dilatory federal courts in the nation are located in the state of New York, he stated. In New York's Eastern District, which includes Brooklyn, Queens, Richmond and Long Island, almost four years is required to complete litigation in a civil case. In the Southern District of New York, which includes Manhattan and the Bronx, the average time required is 28.8 months.

Private civil suits make up the bulk of the litigation handled by the Federal judiciary. In the year ending June 30, 1957, the number of such suits filed in the federal courts increased by a sharp 10%.

In order to cope with the rising demand on the federal judiciary, the Judicial Conference of the United States has requested Congress to create forty-one new district judgeships and four more courts of appeals.

Four more district courts are asked for the Southern District of New York and two for the Eastern District and two more appellate judges for the Second Circuit, which includes the states of New York, Connecticut and Vermont.

'Originality'

The Official Register of The Law School of Harvard University states (page 22), "Every third year student must present a satisfactory piece of written work in some selected field of study." To satisfy this requirement the student is expected to prepare an original contribution to some area of law.

Through the Law School's interpretation, however, the word "original" takes on added meaning. Despite obvious savings in time and money that could be achieved through duplication for a student who wishes to present his paper to many groups (law firms, legislative commissions, or for publication), the official stand of the administration has been stated:

Only ribbon copies of papers may be submitted. Carbon copies and mimeographed copies and other duplicated copies are unacceptable.

The RECORD suggests that perhaps this is an area where the placing of a little more emphasis on originality of thought and a little less on originality of mechanical presentation would do no one any harm but would benefit a not inconsiderable number of financially hard-pressed third year students.

Jury's Dilemma

The case of *Green v. United States*, 355 U.S. 184 (1957), reported as the *Current Case* in last week's RECORD sharply illuminates a section of American criminal law that badly needs attention.

Green, it will be recalled, was convicted in the United States District Court for the District of Columbia on counts of arson and second degree murder. The evidence showed, however, that the defendant was guilty of arson and that the fire he set was the sole cause of the victim's death. He could, therefore, if he were guilty, be guilty *only* of murder in the first degree (felony-murder). The Court of Appeals for the District of Columbia reversed on this point.

At a new trial a second jury found Green guilty of murder in the first degree, but the Supreme Court reversed his conviction on grounds of double jeopardy, declaring that when the first jury found Green guilty of second degree murder it automatically acquitted him of murder in the first degree.

Justice Felix Frankfurter, in a dissenting opinion, declared, "The jury found him guilty of all the elements necessary to convict him of the first degree felony-murder with which he was charged, but the judge's erroneous instruction permitted the jury, for its own undisclosed reason, to render an irrational verdict."

Jury Made Sense

But the verdict rendered was not irrational; not at all. A conviction of murder in the first degree in the District of Columbia results in an automatic sentence of death. A jury may not qualify such a verdict, as it may in many states, by adding "without capital punishment." *Johnson v. United States*, 38 App. D.C. 347; *aff'd*, 225 U.S. 405.

The first jury which heard Green's case, as did the second, obviously believed the man guilty of murder, as the District of Columbia Code defines it (Sec. 22-2401), in the first degree. But it was reluctant to condemn the man to death. Therefore it voted for conviction of second degree murder, which is punishable by a sentence of from 20 years to life.

There are today about 10 states in the Union, plus the District of Columbia, which impose a mandatory sentence of death upon conviction of first degree murder. In other states the imposition of the death penalty is left to the discretion of the judge. In many more it is within the power of the jury, by recommendation, to save the convicted man from death.

Juries Hesitant

To vote to send a man to the electric chair or the gas chamber is not an easy thing for most people to do, even when they think him guilty of a most heinous crime. It is a common occurrence for juries, in states where their recommendation will not save a prisoner from death, to bring in what Justice Frankfurter would consider "irrational" verdicts of second degree murder or manslaughter in order to prevent the execution of the convicted man.

Prosecutors often accept pleas of guilty to second degree murder or manslaughter from persons whom they believe guilty of murder in the first degree. They do this not only to save the time and expense of a trial but because they are often glad to be relieved of the unwelcome and undesirable task of pressing for a death sentence for the accused.

It is a very simple thing, indeed, for a prosecutor or judge to inform a jury that it is not really *they* that condemn a man to

Haile, a resident of Tennessee, was visiting the Cherokee Indian Reservation in the mountains of western North Carolina. As he was crossing a swinging footbridge over the Oconaluftee River to reach a tourist attraction, the bridge fell, and he was hurt. Haile brought suit in federal district court last year against Osley Bird Saunooke, who maintained the tourist attraction; the Eastern Band of Cherokee Indians, for whose benefit the Government held in trust legal title to the land where the span had hung; and the United States in its capacity as a government, and also as trustee for and guardian of the Band and its members.

The Government moved in district court to dismiss that part of the action against it as guardian of the Band. Judge Wilson Warlick granted the motion, holding that the Government had not as sovereign consented to be sued. *Haile v. Saunooke*, 148 F.Supp. 602 (W.D.N.C. 1957).

Two days later the Band moved in the same court for dismissal of the action against it. 148 F.Supp. 604 (1957). Judge Warlick found that the Eastern Band is a remnant of the old Cherokee Nation which had remained behind when the bulk of the Nation was transported beyond the Mississippi River under the Treaty of New Echota, 7 STAT. 478 (1835). The Band organized a separate tribal government in 1868, and in 1889 was granted a charter of incorporation by the State of North Carolina (N.C. PRIV. LAWS 1889 c. 211). As set forth in its corporate charter, the Band elects a Principal Chief, a Vice Chief and a Tribal Council; these officers direct the business affairs of the organization, and enforce tribal ordinances and resolutions adopted by the Council and approved by the federal Indian Office.

Federal Jurisdiction

The jurisdiction of the federal courts to entertain a suit by or against an Indian tribe has long been disputed. The Constitution provides that "The judicial power shall extend . . . to controversies between two or more States . . . and between a State or the citizens thereof, and foreign states, citizens, or subjects." U.S. CONST. Art. III, §2, cl. 1. Chief Justice John Marshall held in *Cherokee Nation v. Georgia*, 5 Pet. 1 (1831) that the Cherokees were neither a State nor a foreign state within the meaning of this clause, even though the United States had by treaties recognized their sovereignty and territorial integrity.

On the other hand, nearly a century after Marshall's opinion it was held that a tribe chartered as a corporation under the laws of New Mexico had capacity to sue the Secretary of the Interior to restrain him from unlawfully disposing of their lands. *Lane v. Pueblo of Santa Rosa*, 249 U.S. 110 (1919). Congress later passed the Indian Reorganization Act, 48 STAT. 984 (1934), 25 U.S.C. §§461-79 (1952), which allowed each tribe to adopt a constitution, by-laws, and obtain a federal charter of incorporation. Under this Act it has been held that a tribe may sue in federal court to collect a tax levied by tribal ordinance on non-members leasing lands within the reservation. *Oglala Sioux Tribe of the Pine Ridge Reservation v. Barta*, 146 F.Supp. 917 (D.S.D. 1956).

Congress has upon occasion authorized suits to be brought against Indian tribes. See, e.g., 35 STAT. 444 (1908). But in the absence of such authorization it has been settled for fifty years that a tribe is not liable to be sued in state or federal courts. In *Turner v. United States and Cherokee Nation*,

death, but it is *the law* that does so. Yet this does not seem altogether true, for the law does not execute a man without an appropriate verdict of a jury; and the jury is very conscious of this fact.

The jury is conscious, too, of the fact that it is not always easy to distinguish the apparent from the real, that it could guess wrong, could make a mistake, could send an innocent man to his death. A jury finds it hard to forget this.

Many times, also, a crime for which a statute requires the "supreme penalty" does not really seem to deserve it. This is especially true in states which retain the much criticized felony-murder rule. And most states have retained it.

New Law

State laws which refuse to give effect to a jury's recommendation for leniency should be changed. And the reason is stronger now than before, for the significance of the decision in the *Green* case is just this: If a jury believes a man to be guilty of first degree murder, but is loath to condemn him to death and consequently convicts him of a lesser offense, it will get no second chance to consider the case if the prisoner's conviction of the lesser offense is later set aside by a higher court.

Heretofore whenever a man indicted for a capital crime has been convicted of a lesser offense, despite the fact that the evidence points to his guilt of the grosser offense only, he has been loath to appeal for fear that if

Current Case

248 U.S. 354 (1919), a tribe leased certain land to Turner, who put up a fence and other improvements on it. A mob of tribesmen led by a tribal official tore down the fence and drove Turner away. Turner's action against the Government and the tribe was dismissed on grounds of a lack of any substantive cause of action. The Supreme Court affirmed. "Like other governments, municipal as well as state," wrote Justice Louis D. Brandeis, the tribe "was free from liability for injuries to persons or property due to mob violence or failure to keep the peace." (248 U.S. at 357). Somewhat later this tribal immunity was described even more broadly by Justice Stanley F. Reed in *United States v. U.S. Fidelity Co.*, 309 U.S. 506 (1940). "These Indian nations," he said, "are exempt from suit without Congressional authorization. It is as though the immunity which was theirs as sovereigns passed to the United States for their benefit, as their tribal properties did." (309 U.S. at 512).

The situation has not been changed by the Indian Reorganization Act, even though tribes have been recognized as entities with a limited degree of sovereignty over their members, and have often been granted charters of incorporation by the Federal Government. A recent decision held that a federal court has no jurisdiction to entertain a suit against a tribe by one claiming that his membership in the tribe has been unlawfully revoked by its council. *Martinez v. Southern Ute Tribe*, 151 F.Supp. 476 (D.Colo. 1957). The court based its decision not on grounds of sovereign immunity, but said that tribal membership is not a right created by the Constitution, laws, or treaties of the United States; rather, by the tribal constitution. This holding seems inconsistent with *Barta*; there the taxing power of a tribe was created by its constitution, but it was said that the constitution itself is recognized by the Indian Reorganization Act, exists at the pleasure of the United States, and is therefore a function of the Government enforceable in federal courts.

Motion Granted

In light of this line of decisions, Judge Warlick granted the Eastern Band's motion to dismiss. He noted that although the Band was subject to the Indian Reorganization Act, in 1935 it had voted 484-381 to reject a proposed constitution under the terms of that Act. Nevertheless, the Government had for nearly a century dealt with the Band as with other Indian tribes. A federal superintendent had been appointed for the reservation. During 1956 Congress had appropriated \$650,000 to pay the costs of administration, education, forestry, soil conservation, road construction, and other welfare items for the tribesmen.

"By these and many other actions," Judge Warlick wrote, "both the Congress of the United States and the Executive Branch of the Federal Government have over a long period of years and continuing to the present time dealt with and recognized the Eastern Band of Cherokee Indians as an Indian Tribe within the meaning of the Constitution and laws of the United States." (148 F.Supp. at 607).

Judge Warlick held that North Carolina's charter of incorporation to the tribe had only such effects as did not conflict with the plenary power of the United States over the Band. Since Congress had given no consent for suit to be brought against them, the action against the Indians was dismissed.

Haile appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed the dismissals, 246 F.2d 293 (4th

he succeeds and his conviction is reversed, he may be subject to a new trial on the capital crime and may suffer, as a reward for the success of his appeal, the forfeiture of his life. But the number of such appeals must now multiply because the danger that a reversal and new trial will result in a conviction of the grosser crime has been removed by the *Green* case.

In states where a jury may not convict a man of first degree murder and yet save him from the "supreme penalty," a jury may now be squarely faced with the unwelcome choice of either condemning to death a man it believes to be guilty, or freeing him altogether. It is not wise to force a jury to make this choice. The consequence is likely to be that many guilty men will be acquitted to walk the streets of the community as free and dangerous citizens because a jury recoiled from the act of sending them to their death.

It has often been pointed out that punishment which is sure but not extremely harsh is a more effective deterrent to crime than punishment which is more severe but less certain. Though it is questionable whether a sentence of imprisonment for life is really less harsh than a sentence of death, it is undeniable that it is more certain in its application.

If a state does not consider it desirable, as an increasing number of people do, to abolish capital punishment altogether, it should, in the name of expediency and practicality, limit its use to cases where a jury does not recommend leniency.

Cir. 1957). Chief Judge John J. Parker declared that the fact that the Eastern Band remained behind when the bulk of the Cherokee Nation was transported westward did not deprive it of its tribal status. This particular point had been decided in another opinion written by Judge Parker, *United States v. Wright*, 53 F.2d 300 (4th Cir. 1931).

Judge Parker affirmed the district judge's holding that a recognized Indian tribe cannot be sued without the consent of the United States, regardless of any actions by a state legislature. Nor can the same result be accomplished through suing the United States as trustee or guardian for them.

On the other hand, the court ruled that Haile could still go against Saunooke as an individual, and even against the Government itself under the Federal Tort Claims Act, 28 U.S.C. §1346(b) (1952), if he could show his injuries resulted from the negligent or wrongful act of a Government employee acting within the scope of his office or employment.

The judgment of the Fourth Circuit became final last December when the United States Supreme Court denied certiorari under the name *Haile v. Eastern Band of Cherokee Indians*, 355 U.S. 893 (1957). Regardless of what the Court may think of the issues involved at least it is not prepared at present to overrule the long line of decisions which confer upon a tribe, if not immunity, at least something which has the same practical consequence.

Tribal Council's Powers

Despite the federal controls emphasized by Judge Warlick, the Eastern Band's Tribal Council supervises the economic activities of the tribesmen, controls tribal land, appoints attorneys, licenses non-tribal traders, regulates its membership rolls, prepares budgets for expenditures from tribal funds held in trust by the Government, and has a veto over the use of these funds. It seems peculiar that a corporation with such extensive powers should not be liable to suit if a guest on its land is injured through its negligence.

On the other hand, Indian tribes (as distinguished from individual tribesmen) have long been regarded as subject to the virtually unrestricted power of the Federal Government. Whatever theory, if any, may justify this exclusive power, it is now too late in the day to deny it. The protection of the Indians through the supervision and protection of the tribes is now so uniquely a federal responsibility, that any suit against a tribe as a practical matter becomes a suit against the Government.

Whether this is a healthy situation and one that should continue indefinitely has been hotly debated for generations. Some have insisted that Indians, like other minorities, should be assimilated into the general population as quickly as possible. Others have argued that they should be encouraged to practice citizenship through tribal self-government and that assimilation should be by individuals prepared for it rather than by tribes, some members of which may be unprepared for the responsibilities of general society.

The fact is that not all Indians want to assimilate, and not all want to give up the numerous hereditary special rights they enjoy. Here a moral issue appears. Once the Indians owned every acre of land in the United States. Whatever soil was not taken from them by force was obtained through treaties in which the United States promised them — and their heirs — certain special rights. Perhaps it is equally late in the day now to insist that these promises with the tribes be broken.

— Oliver

Harvard Law Record

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World Bank General Counsel Explains Novel Legal Issues

Mr. Aron Broches, General Counsel of the International Bank for Reconstruction and Development, addressed the second public meeting of the International Law Club on February 19. The following are excerpts from his speech:

Traditionally including only nations, the international legal system has recently been confronted with the problem of a new kind of legal person: the public international organization.

These problems are analogous to those created by the emergence of the corporation in private law. They involve questions of capacity to contract, to be sued, and to suffer execution.

When the Bank was set up at the Bretton Woods Conference in 1944 its Articles of Agreement (Charter) were drafted to define its functions in detail. This was important, because, like the United Nations itself (which is, however, less closely defined), the Bank has a broad power to contract as its functions require. It was important to give nations some idea of what this would entail. Otherwise there would be confusion over whether such an entity should be considered as limited in capacity as an ad hoc tribunal, or as competent as a state.

Flow of Capital

The purpose of the Bank was less to show a profit on its financing in terms of money, than to promote the international flow of capital. It was, he said, in effect, an international cooperative for that purpose, and consisted of sixty member nations, who contribute its capital as a condition of becoming its shareholders. (They get 250 votes as members, and an additional vote for each \$100,000 contributed above their minimum quota, which may vary according to the economic strength of the nation concerned.) The largest shareholders appoint five executive directors, and fifty-nine remaining members elect another twelve to represent them. However, in the whole twelve years of its operation, no one has ever been impolite enough to disagree with the other members. The Secretary keeps his yellowing tally-sheet handy, but we have never had a counting of votes.

Questions of status are particularly important for the Bank because, unlike many other international entities, the Bank is neither a regulatory nor a consultative, but an operating agency. Therefore it must deal with the public in situations normally covered by domestic laws. But, since it is

internationally constituted, we take the position that its agreements are international agreements, insulated from the effects of national law.

The privileges and immunities of the Bank become domestic law only through domestic procedures. For example, the Bretton Woods Agreements Act states that the provisions of the charter shall be law in the United States. The Bretton Woods Agreement itself had already been adopted, as far as the international aspects of it were concerned, but this would not have been sufficient to implement them internally.

Necessary Condition

The Bank has a capital of about nine billion dollars. It concerns itself with developmental plans which would not attract private capital, so that it does not compete. The private — or public — borrower accepts the Bank's proposals, and gets his government to guarantee the loan, a necessary condition.

Only a small amount of the national quotas are actually paid in. Two per cent, in dollars, is always available for lending operations. Another 18% is available, in the currency of the contributing member, for loans which are subject to the approval of the member. The remaining 80% is callable by the directors of the Bank only to pay the Bank's obligations. So the member nations actively control the financing in question.

The first serious questions of operation were raised when the Bank undertook its first venture in 1947. Naturally, no one was going to do business with us without asking, "Could we be sued? and if so, where?"

The Bank has a modified immunity. By its charter it cannot be sued by member governments or those claiming through them. But these governments are protected in their dealings with the Bank because they control its policy; and, as mentioned, in practice they have found themselves in continuous agreement.

The Bank's charter also provides that it can be sued by a private party, or an agency, wherever it has an office or has guaranteed securities. Nevertheless there are many municipal law problems. Suppose a government cannot obtain legislative authority for a loan it has purportedly undertaken?

We take the position that the loan is internationally binding. The specific agreement is registered with the Secretary General of the United Nations as a "document in the nature of a treaty." We ascertain whether the borrower is authorized beforehand and ask collateral. But even when we get it, the law of the place applies to questions of enforcing the obligations of the parties.

The loan agreements make use of arbitration to provide the forum. We cannot use the International Court of Justice, for although we have international personality, only states may bring cases before it. Nor, politically, can we make use of the courts of any single state. Therefore, each party to any dispute appoints an arbitrator, who may choose a third. The awards of the arbitral tribunal are enforceable in any municipal court.

Even where the Bank gets an award, however, we have not insisted, in enforcing it, on a waiver, where the borrower was a sovereign, of his immunity, where it does not already exist.

Advisory Opinions

It may be added that, although the Bank may not sue or be sued in the International Court, its relationships agreement with the UN gives it the right to ask the Court for advisory opinions. Even the UN itself cannot appear before the Court; yet, as an international person it can appear and make claims in other tribunals, and enter into treaties.

A new question arose when we en-

Wins \$222,500

Edward Weglarz, a 31-year-old carpenter's helper, sued the City of New York for false arrest, assault and malicious prosecution. On February 24 in the Brooklyn Supreme Court he won a verdict of \$222,500.

Mr. Weglarz had been arrested on February 19, 1949 and charged with a \$60 robbery. He claimed that a confession had been beaten out of him by police at a station house. Indicted for robbery and grand larceny, he was subsequently acquitted by a Kings County Court.

The breakdown of Mr. Weglarz' award is: assault, \$40,000; false arrest, \$45,000; and malicious prosecution, \$137,500.

tered the Swiss market for the first time, in 1950. Switzerland is not a member of the Bank, and the immunity of the Bank from suit by governments therefore did not apply. The Swiss bankers, on the other hand, most of whom were lawyers, were afraid that the Bank could not be sued at all, since their doctrine of 'elective domicile' only applied to private corporations.

The problem was solved by a special agreement that Bank members would not sue it in Switzerland, and that the Bank's assets could be seized and sold only after a final judgment.

Our problems in the United States have involved the question of whether the Bank is a 'governmental' agency, entitled to enjoy the exemptions contained in various regulatory statutes. Naturally, we have always argued that it was. You are all familiar with this type of legal reasoning.

Statutes

The principal statutes involved were the Securities Exchange Act of 1933, the Trust Indenture Act of 1939, and the Investment Companies Act of 1940. These illustrate quite different methods of solution.

Was the Bank required to register with the SEC? Perhaps it could have been argued that it was exempt as a 'fraternal organization.' But practice overrode theory. The Congressional hearings relating to the Bretton Woods Agreement disclosed a supposition that the Bank's securities would be subject to 'approval' (although the technical language of the SEC makes it clear that it is criminal to claim that any securities have been approved by that body!), so as a matter of practical politics, no contrary legal argument was attempted.

We registered with the SEC only once, in 1947. It was very burdensome. With SEC and Treasury approval, specific legislation in 1949 exempted us from further compliance. Now the Bank "reports" to the SEC, but it does not "register."

The Trustee Indenture Act presented another awkward problem: it would be difficult to select a trustee for the Bank. And there was no real need, for the Bank follows a policy of no secrecy, publishing all reports.

The Act contained an exemption for agencies of the United States, for foreign governments, and for their agencies. The SEC, including Mr. Loss [Professor Louis Loss, a former Associate General Counsel for the SEC] agreed that the Bank was an agency of "United States and foreign governments," and granted it exemption.

Finally there was the Investment Companies Act. This is designed to protect shareholders. Our shareholders are all governments, and we could not comply. Instead of asking for a ruling or exemption, however, we argued that the Act was not intended to apply to shareholder governments.

(See WORLD BANK on page four)

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Dean Griswold Opposes Enactment of 'Jenner Bill'

Hearings are now being held by the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate on a bill (S. 2646) introduced by Senator William Jenner (R) of Indiana (popularly known as the Jenner Bill) which would withdraw from the Supreme Court of the United States appellate jurisdiction in cases involving, (1) congressional investigating committees or contempt of such committees, (2) federal loyalty security programs, (3) state action on subversive activities, (4) local rules on alleged subversion among teachers, (5) state regulations for admission to the bar.

The following are excerpts from a statement filed by Dean Erwin N. Griswold with the Subcommittee last Monday:

S. 2646 is probably constitutional. But not everything that is constitutional is wise or desirable. It seems to me, though, that S. 2646 is contrary to the spirit of the Constitution, and that its enactment would not be

to perform this judicial function in the types of cases specified in the pending Bill.

Moreover, the enactment of S. 2646 could only lead to conflicts in decisions of the lower Courts, and resulting intolerable confusion. It is obvious enough that the decisions of these lower Courts throughout the country could not be always consistent. Without final authority in the Supreme Court to resolve these conflicts, the country's law on these important matters would become a patchwork. It would be one thing in one state or Circuit, and another thing in another. At that point, I think that it would soon become apparent that having no Supreme Court for these matters, we would have to invent one. Thus, if S. 2646 should be enacted, it would inevitably have to be repealed to eliminate the legal chaos which it would produce.

Essentially Conservative

The Supreme Court is an essentially conservative institution. It is in the nature of things that it should be the subject of controversy, since the questions which come to it are difficult and important ones. But the Court is the balance wheel in our Government, proceeding slowly and deliberately, always disinterested and dispassionate. It keeps us from swinging too far one way or the other.

Throughout our history, the Court has, on the whole, performed well the essential function of keeping our Government on a sound middle course. The United States would not work well in the long run with a weak Supreme Court, just as it would not work well with a weak Congress or a weak Executive Department. All three branches of the Government are essential, and the Supreme Court should not be impaired in carrying out its important task as one of the truly independent and coordinate branches of our Government. If the Supreme Court is once made subservient, which would be the effect of the enactment of S. 2646, a great conservative influence, which has played a key part in the successful functioning of our Government, would be substantially impaired.

(See BILL on page four)



Erwin N. Griswold

a wise exercise of the powers given to the Congress by the Constitution. It is of the essence of the Constitution that we have an independent Judiciary. We will not have an independent Judiciary if the Congress takes jurisdiction away from the Supreme Court whenever the Court decides a case that the Congress does not like.

The provisions of S. 2646 are clearly punitive in purpose and effect. The enactment of this Bill would, in my opinion, be an excessive and unfortunate exercise of Congressional power.

No one thinks that courts are inevitably right; but they are the institutions which are established in our system to make decisions in justiciable controversies, to resolve the difficult questions where there are conflicting claims of right. Decisional law has always grown and developed by a process of trial and error. Where a case has been found to have gone too far, it is later qualified or distinguished, or even overruled. This is the function of courts. It is through this process, as the future Lord Mansfield said more than 200 years ago, that decisional law "works itself pure." There is no doubt that this process will continue in decisions of the Supreme Court. No possible good that I can see will be served by taking away from the Supreme Court power

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Arab Unity Topic Of Talk by Kirk

The move for unity among Arab states is characterized by a "national mystic" similar to the spirit that united the North American states, Italy, and Germany, according to George E. Kirk, visiting lecturer on government. Mr. Kirk addressed the Law School Young Republican Club Monday afternoon in the Wheeler Room. The advocates of Arab unity were described as "young, intelligent, able, and vigorous Moslems, who feel that the power is held and abused by less competent people." Professor Kirk, who is on the faculty of the American University in Beirut, said that neither those in political power, who seek to retain the *status quo*, nor the inarticulate masses are striving for unity.

The young intellectuals look to Premier Gamal Abdel Nasser of Egypt as the type of leader that can fulfill their dreams. They have posited their activities upon the presupposition that unity of language, religion, culture, and historical heritage will make the transition to political unity easy, according to Professor Kirk.

He explained that the Arab "national mystic" is unique in its religious character. Monotheism is especially strong in their dogma, which describes the Arabs as God's chosen people. The former research scholar for the Royal Institute of International Affairs said that "there seems to be the suggestion that the unity of God is impaired if there are defects in the unity of the chosen people."

The prospects for the success of Egyptian-Syrian unity were put in a more promising light than the Jordan-Iraq union, because Nasser represents the kind of leader the young intelligentsia see as representative of their ideals. In Jordan and Iraq, however, the government is under the control of a conservative group. Thus the young intellectuals who search for Arab unity retain the "left-out feeling" and constitute an articulate opposition group.

Manning L. Muntzing, 1L of Moorfield, W. Va., president of the group, introduced the speaker.

—Manley

DISBARMENT

(Continued from page one)

inherent in a client's security fund. During the survey year 1955-56, 55 attorneys were disbarred, 45 suspended, 16 resigned, and 18 were reinstated. All states reported except Connecticut and Georgia. During 1956-57, 65 were disbarred, 56 suspended, 18 resigned, and 24 were reinstated. Only Georgia failed to report.

Last year New York and California each had a combined disbarment-suspension-resignation total of 16. New Jersey followed with 11. Texas had 7, Ohio 6, while Massachusetts and Florida had 5 each.

Mr. Smith noted that the 65 disbarments last year accounted for .003 percent of the profession.

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The Forum cannot otherwise guarantee that extra seats will be available at the door.

—Thank You

Faculty Publications

The following articles by members of the Law School faculty were published during the past month:

Harold J. Berman — *Soviet Law and Government*, 21 MOD. LAW REV. 19.

Robert Braucher — *The 1957 Official Edition of the Uniform Commercial Code, with Text and Comments; A Special Supplement to the Annotated Laws of Massachusetts comprising Chapter 106, the Massachusetts Uniform Commercial Code.* (Professor Braucher was Editor and Co-ordinator of both.)

Lon L. Fuller — *Positivism and Fidelity to Law: A Reply to Professor Hart*, 71 HARV. L. REV. 630. (Published together with an article by H. L. A. Hart, *Positivism and the Separation of Law and Morals.*)

Fleming James, Jr. — *Some Reflections on the Bases of Strict Liability*, LA. L. REV. (Feb. issue)

Louis B. Sohn — *The Establishment of the United Nations Emergency Force*, 51 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 206-229 (1957).

URANIUM

(Continued from page one)

running our supplies of fossil fuels. Prospective investors in uranium seem to be plagued by three major "fears," Mr. Stretch declared. These are (1) over-production, (2) present high costs of nuclear power as compared to other power methods, and (3) a feeling that harnessing hydrogen fusion will make fission power obsolete relatively soon.

As for over-production, the speaker said, a projection of our planned requirements show that in 20 years the United States may well be facing a shortage in facilities for the extraction of uranium. Further, the Atomic Energy Commission has publicly stated that present production is not stockpiling uranium ore above ground.

In the opinion of Dr. Edward Teller and other experts, Mr. Stretch went on, the practical harnessing of hydrogen fusion will not be achieved in the next 40 years. The poor reputation of many uranium stocks, he concluded, has been caused in large part by "penny" uranium stocks, backed by no discovered deposits or other assets, which have flooded the market in recent years.

Atlas Corporation has more than one third of its outstanding investments in uranium. The corporation owns three large mines, and concentrating mills with an aggregate capacity of 3,000 tons of processed ore daily. Atlas Corporation also controls 5% of the proven uranium reserves in this country. —Cover

BILL

(Continued from page three)

In summary, I am opposed to the enactment of S. 2646 because:

1. It is contrary to the spirit of the Constitution which requires the maintenance of a free and independent Judiciary.
2. It is unwise, even if it should be Constitutional.
3. It would be thoroughly unpopular once the public understands what is involved, just as the court packing plan touched something deep in American emotions, and resulted in widespread public opposition.
4. It would lead to confusion and conflict, since there would be no means of resolving the inevitable contradictions among the many lower Federal Courts.
5. It would impair a fundamental and essentially conservative influence in our Government.

BYSE

(Continued from page one)

brought suit in the Court of Claims to recover Humphrey's salary. When the case reached the Supreme Court, the court upheld the claim. Mr. Justice Sutherland held, first, that the provision in the Federal Trade Commission Act which stated that 'any commissioner may be removed by the President for inefficiency, neglect of duty or malfeasance in office' limited the President's power of removal to one of the stated causes.

"The Justice then limited the *Myers* holding, stating that although there were expressions in the Chief Justice's opinion which would uphold the government's contention, the 'narrow point actually decided' was that Congress may not limit the President's power to remove purely executive officers. But as to quasi-legislative or quasi-judicial agencies there can be no doubt of the authority of Congress 'to require them to act in discharge of their duties independently of executive control; and that authority includes as an appropriate incident, power to fix the period during which they shall continue in office and to forbid their removal except for cause in the meantime.'

"The Justice closed his opinion with the observation that to the extent there was a 'field of doubt' between the *Myers* case and this one, 'we leave such cases as may fall within it for future consideration and determination as they may arise.'

"The Mack case would not be explicitly covered by either *Myers* or *Humphrey*, because the FCC statute contains no provision for removal. The usual explanation for this omission is that the statute was passed in 1934 after *Myers* and before *Humphrey*, at a time when, in light of the broad language of *Myers*, legislative draftsmen assumed Congress could not validly limit Presidential power of removal. The same omission occurs in the statutes establishing the FPC and SEC in 1930 and 1934. The First Hoover Commission recommended that Congress remedy this situation in 1949, but no action has been taken.

"Two lower court opinions may shed some light on the problem. The first is *Morgan v. TVA*, 115 F.2d 990 (6th Cir. 1940), cert. denied, 312 U.S. 701 (1941). President Roosevelt removed TVA Chairman Arthur E. Morgan, after giving him opportunity to appear before him to explain charges he had made against other members of the TVA. The Court of Appeals upheld the discharge on the grounds that Congress had not limited the President's power of removal and also that Morgan was an executive official within the rationale of the *Myers* case.

"*Wiener v. United States*, 142 F.Supp. 910 (Ct. Cl. 1956), cert. granted, 352 U.S. 980 (1957), involves President Eisenhower's removal of a member of the War Claims Commission, which had been created to adjudicate claims filed by civilian internees, war prisoners, and certain religious organizations. The statute establishing the commission—like the FCC statute—has no provision concerning removal. The President gave no grounds for removal. The Court of Claims held (4-1) that in the absence of a statutory limitation on his power, the President may remove an official appointed to perform quasi-judicial and quasi-legislative functions. Said the court, 'If the President had not unlimited power to remove him, he could not be removed at all except by impeachment, since the statute stated no limited grounds upon which the President might remove him.' Judge Whitaker, dissenting, urged that *Myers* and *Humphrey* hold that as to an executive officer, Congress cannot limit the removal power but as to a quasi-judicial or quasi-legislative official, 'there is no such inherent power, and hence the President possesses only such power as Congress confers on him.'

"There are, then, three possibilities in regard to an official such as Mr. Mack who exercised quasi-legis-

WORLD BANK

(Continued from page three)

who were in no need of protection. The SEC agreed here, too.

In these three cases we invoked no Charter provision, using only general reasoning. But the Charter was used in an FCC proceeding, against several public utilities which denied we were entitled to the low rates the Government gets on its communications. Our Charter provided that the Bank's communications were to be "treated" on an equal basis with the communications of its members. Our directors, who had the right of interpreting the Charter, agreed that 'treatment' meant rates.

This was the only instance where an interpretation of the Charter affected private parties. The FCC agreed with us. There was no pressure for a review of its decision.

lation and quasi-judicial powers: (1) The President has unlimited power to remove. This is the view of the majority of the Court of Claims in the *Wiener* case. This also appeared to be the view of the First Hoover Commission, repeated by Arthur Krock in the New York Times on January 30. (2) The President may remove only for cause. This is the view the President expressed in his press conference; it also is the opinion of James C. Sargent, a member of the SEC, in a letter replying to Mr. Krock, published in the New York Times on February 11, 1957. (3) The President cannot remove even for cause. This is the view of Judge Whitaker, dissenting in the *Wiener* case.

"The Supreme Court may clarify the matter in the *Wiener* case which was argued last November. In that event, there will be no need to speculate whether the President had power to remove Mr. Mack. But the editor insists that the professor state his opinion. And so I do.

"I believe that the President clearly had power to remove Mr. Mack for cause, that the testimony of Mr. Mack and Mr. Whiteside before the Subcommittee on Legislative Oversight concerning their relations shows adequate cause and possibly violation of the FCC statute which prohibits a commissioner from being 'financially interested in any company furnishing services . . . to any company engaged in communication by wire or radio,' and that although 'cause' might be determined without a trial, simple fairness requires that a person threatened with discharge for cause be given an opportunity to meet the charges against him and to present evidence and argument on his own behalf. I see no need for the President himself to conduct the hearings; he may surely delegate such a function to others. The President should then study the record and reach his decision.

"Finally, had Mr. Mack not resigned, I believe that the President should have removed him and thus insisted upon a certain minimum standard of integrity in the federal regulatory process. Executive action is particularly necessary in this area where Congress has failed to enact a code of ethics to guide administrative conduct."

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World Tax Series Receives \$15,000

The Law School has announced that the World Bank and the International Finance Corporation have made a joint contribution of \$15,000 to the World Tax Series. The World Tax Series consists of reports on national tax systems throughout the world. This project was undertaken by the Harvard Law School International Program in Taxation in response to a resolution passed by the Economic and Social Council of the United Nations in 1951 requesting the publication of a world-wide service of information on tax laws and administration.

Members of the law school faculty are working on the Series in close cooperation with officials of the United Nations Secretariat and tax experts of other countries. To date, they have completed research and published reports on three nations, the United Kingdom, Brazil, and Mexico.

Dean Erwin N. Griswold said that work is currently progressing on reports for Australia, Sweden, Colombia, and West Germany. In making this grant, the World Bank and the International Finance Corporation stated: "We are convinced that the World Tax Series will benefit the business community, the legal profession, and member countries generally."

STASSEN

(Continued from page one)

Mr. Stassen continued. After citing the accomplishments of the Geneva meeting, he suggested that Great Britain, France, Poland and Czechoslovakia also attend the parley.

Mr. Stassen, speaking without notes, pleased his audience by limiting his address to 45 minutes and then inviting his listeners to query him on the soundness of his proposals. The questions from the floor, which he handled with adroitness, elicited the speaker's disapproval of the Kennan plan to neutralize Central Europe, his confidence that the Soviets will not use the Red China or German unification problem to frustrate disarmament moves, and his belief that a competition between the American and Soviet systems will result in a steady demand for more internal freedom by the Russian people.

—Page

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