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## SPECIAL

### COMMENCEMENT ADDRESS DELIVERED BY CHARLES S. RHYNE\*

I DEEPLY appreciate the honor conferred upon me and the privilege of taking part in your graduating exercises. A commencement ceremony is always a great and pleasant occasion. For the Faculty it means the end of another school year of work. For the graduating class, it means the opening up of new fields, possibly unknown fields, for service and accomplishment. For you proud parents it means a goal achieved and an obligation fulfilled.

May I say, through personal experience, that while you graduates leave this outstanding Law School today to open a new chapter in your lives, you will find that your ties to this School and its able Faculty will never end. And for that, through all the years which lie ahead, you will be eternally grateful. Your life has been permanently enriched by your associations here and by the immeasurable widening of your horizons which has occurred. You will find that though there is indeed a great gap between law in action and law in the books, you have been given the tools here to launch a successful career in the law. The rest is up to you.

The life of a lawyer is one of the most interesting of careers because it encompasses the whole of human relationships. Law permeates every segment of society. The boundaries of law are unlimited in subject matter. Its horizons are as limitless as the skies. Regardless of what phase of law you undertake, you will find that the law is a living thing adapting to advances of civilization. The law's basic principles, *i.e.*, what is fair and reasonable in the experience of mankind, never change, but its rules based upon those principles are in a state of constant change.

The idea that lawyers are concerned only with clients and the Courts is a wrong conception of our profession. Lawyers devote more time to public affairs than any other group of professional men. A legal career and participation in public affairs go hand in hand. Check the heads of any community, state or national public service activity and you will find that invariably a majority are lawyers.

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\* This commencement address was delivered at the Dickinson School of Law, Carlisle, Pennsylvania on Saturday, June 4, 1960. Mr. Rhyne is a past president of the American Bar Association, and is presently a member of Rhyne & Rhyne of Washington, D. C.

Approximately two-thirds of the members of Congress are lawyers. Twenty-three of the thirty-three men who have served as presidents of the United States have been lawyers. Well over a majority of the governors of states and mayors of cities are lawyers.

The legal profession is the great incubator of the public service leaders of our Nation. Nearly every lawyer at one time or another will be in the public service on a full-time or a part-time basis. Public service is most definitely one of the primary functions of our profession. The contacts you make, and the capacity you demonstrate in the public service you undertake, will largely determine your success as a lawyer.

Today I will not dwell upon lawyers as public servants, but upon public service by lawyers—uncompensated public leadership. From its inception until the present day this has been the proudest tradition and trademark of our renowned profession. And while I could use literally hundreds of illustrations, I have chosen only one. But it is indeed the most important public service ever undertaken by lawyers: the creation of a world legal order to end war.

Within a single generation scientific, technological and economic developments have radically altered the nature of man's world which now includes the additional worlds of outer space. What man produces, how he travels, where he is going to travel, and the manner in which he communicates, along with the relationship of time and space have been fantastically altered.

The velocity of change in our civilization is greater today than in any previous era. Rapid and unprecedented change is in fact the keynote of the hour. The new scientific, economic and social achievements of our day have created new tasks for lawyers which go beyond all we have known so far. And even greater changes are undoubtedly on their way. These developments present great opportunities as well as grave responsibilities for our profession.

The super-charged, fast-moving society of our day causes the achievements of man to constantly outrun the law rules he has drafted to govern and guide the conduct of man and government.

For the first time since the dawn of history mankind is now a communicating whole. Technologically we have one world more than ever before. And due to science one nation can now challenge the existence of the whole world. That we must turn mankind into a cooperating whole is the imperative fact of our day. The fate of all men is inextricably intertwined.

The lawyer's program of which I speak is designed to generate the growth and use of law rules and institutions in the world community so as to end frictions and lawlessness in relations between man and between nations. Without law civilized society cannot exist. In a society so complex and tightly knit as our world community today lawlessness leading to war must be ended. The rule of law is the one universal concept mankind has in common which can achieve that result. Throughout history law has brought order and stability into the affairs of man within nations; now it must be utilized to do the same internationally.

Three years ago the American Bar Association launched a program designed to concentrate the manpower and brainpower of the legal profession upon concrete steps to create world peace through the rule of law. This goal has been expressed in past centuries but man has not gone far with it in all the generations of time. The current program to translate ideal to reality started about where the atomic scientists were a few years ago with the atom. Few then believed the atom could be split. It was the impetus of the needs of war which brought on the crash program which crowned that effort with success. And so it may be here. Perhaps the imperative need for peace under the threat of nuclear annihilation may furnish the impetus which will crown this lawyers' effort with success.

Today more than 1,000 lawyers in 80 nations are working on committees to forward this program. These workers are not part of any governmental peace effort. They are private practitioners, professors and judges contributing their time to this program as a public service. The effort is still largely in the exploration and educational stages. Actual plans to translate the great ideal into reality are not yet fully formulated. But the first essential step of focusing world-wide attention upon the promise and potential of the rule of law in the world community has been accomplished. And the necessary working organization is slowly but surely taking shape throughout the world.

Within the legal profession no program yet undertaken has ever sparked more interest and activity. Over 100 special state and local bar committees are collecting information for a volume on "Law and Lawyers of the World." Most of the more than 125,000 LAW DAY—U. S. A. programs which have been conducted in the past three years have been at least partly devoted to this program. Bar associations of many nations, the International Bar Association, the Inter-American Bar Association, the Junior Bar Conference and the American Law Student Association have committees hard at work on this subject.

On the research or university level a recent survey indicates that 75 American law schools now offer 242 courses each year in international law—many having been initiated in the last 3 years. And there is an unprecedented amount of research work now underway to search out the law and ways and means of improving law or formulating new law in this field. From abroad law schools report even more emphasis upon international law than in the United States.

On the public leadership level an ever growing list of world leaders have recently stated their support for this program. President Eisenhower expressed the consensus well when he said: "Mankind no longer has a choice between force and law. If civilization is to survive it must choose the rule of law." Prime Minister Kishi of Japan said on February 12, 1960: "Aspiring earnestly to an international peace based on justice and order, Japan hopefully looks to the early advent of the day when the rule of law will be firmly established in the community of nations." And Prime Minister Diefenbacher of Canada on March 9, 1960, wrote: "In undertaking this work you (i.e., the lawyers of the world) will do much to give people as a whole the realization that only in a world under law can mankind be assured of survival."

On the legislative level 37 Senators joined in a resolution asking the U. S. Senate to endorse the American Bar Association's effort in this field. Many other Senators, Congressmen, Governors, Mayors and others have spoken vigorously in support of the idea of peace through the rule of law internationally.

Both at home and abroad there have been expressions of interest and support from church groups, business groups, labor groups and great lay leaders. In connection with the LAW DAY celebrations in the United States, and the programs sponsored by the Committee on World Peace Through Law of the American Bar Association, several hundred approving editorials have appeared in newspapers and magazines.

By every yardstick of measurement an informed public opinion is being created on a world-wide basis by this focusing of attention upon law—an essential foundation for progress. From the impact of this ever rising tide of interest and activity concrete results are bound to flow. Already this program has stirred the minds and lifted the hearts and hopes of many men.

We expect great strides forward to come from the regional international meetings of lawyers for the Americas, Asia, Africa and Europe, and the World Conference of lawyers which will be held within the next year and one-half.

The Ford Foundation has made a grant of \$350,000 to pay the expenses of those conferences.

Against this background of progress to date let us now consider the most recent events on the world scene and their effect on this effort to bring peace through law to a world poised between hope of total peace and fear of total war.

It is my personal belief that the U-2 and the Paris Summit debacle are the best things that could have happened to shock mankind into a more meaningful effort to achieve and maintain peace. They, via the shock treatment, force a re-evaluation, a re-appraisal of the strengths and weaknesses of our whole program for peace. U-2 dramatized the dangers and fears engendered by the ever accelerating arms race and the necessity for its end before it explodes into world holocaust. The Summit collapse dramatized the fact that peace must be built on a more solid foundation than the Summit. It demonstrates also that peace must be built from the bottom up rather than the top down. We know now we must work for peace on a broad base pursuing every hopeful avenue rather than relying upon one stroke of summit genius.

Out of what at first appears to be a complete Paris failure on the peace issue must come bigger, better and more concrete affirmative plans to create a peaceful world. As you young lawyers begin your practice and lose some lawsuits you will soon learn that often your client will erect a more solid future upon the remnants of an adverse judgment and that the seeming failure will often trigger an extraordinary effort leading to greater success than a favorable judgment. Remember that Lincoln, who made nearby Gettysburg immortal, lost nearly every election he was in before he ran for the Presidency. He truly erected success out of seeming failure.

In assessing the remnants of our peace program after U-2 and the Summit, I lay aside new military and diplomatic plans to cope with the future as I have no knowledge of those fields. Let me say emphatically that military might second to none is an essential safety barrier behind which we can work out a peace based on law. And not for one second do I say law can replace the ancient art of diplomacy. The experts in those fields will plan the future in the light of U-2 and Summit failure. But since I am deeply engaged in measuring the potential and promise of the future of law internationally and the contribution it can make to world peace, I will assess that part of the future with you who will be so much a part of it.

First of all let's look at present rules of law which are universally accepted by the world community, including Russia. The list is not long: (1) The Law of Diplomatic Immunity, (2) The Law of the Sea, (3) The Law of the Air, (4) The International Postal Convention, (5) The Radio and Telecommunications Conventions, and (6) The Antarctica Convention.

The new conventions on the Law of the Sea demonstrate that it is possible by new law to modernize in part age-old rules in that field. The Antarctica Convention while of limited interest is recent proof that it is possible to draft law rules covering fields not previously governed by law. In every field where we have law rules the ever accelerating contacts between nations operate smoothly and without friction. The very existence of the rules brings this about. Sure there are law rule breakers internationally just as there are within nations. And beyond question the existing need is both for more and better law rules as well as more and better ways of handling violators. The development of both are parts of our program.

Let's look at the potential subject matter for new law in the world community. Fields where if we had law rules the chances of friction and disputes leading to war would be lessened. These include: (1) A Disarmament Convention, (2) A Convention on the Use of Outer Space, (3) A Nuclear Tests Convention, (4) An "Open Skies" Convention, (5) Conventions facilitating international business in literally hundreds of areas and on many subjects, (6) A Convention Guaranteeing the Safety of Foreign Investment to facilitate the flow of private funds into underdeveloped nations.

The area unfilled by law internationally is almost unlimited. We have thousands of law rules within nations but so very few internationally. And the ever multiplying contacts in our shrunken world make progress here vital to all mankind. Science has outraced law and law must catch up. As in the case of existing universally adhered to international law, the problem of how to cope with international lawbreakers is important and difficult. The Kellogg-Briand Convention of 1928 renouncing war proved to be only a worthless pious expression of hope because it set up no machinery to deal with violators.

I deliberately mentioned an "Open Skies" Convention to focus your attention upon some of the legal problems inherent in the U-2 flight and those raised for mankind by the creation and maintenance of "closed" societies.

The alleged violation of international law by flying over Russia at a high altitude is interesting as proof that even Khrushchev relies upon law

when it serves his purposes. I could not help but think that on his record of respect for law Khrushchev in this instance stands about in the position of a Dillinger offering proof that J. Edgar Hoover was speeding 26 miles an hour in a 25-mile zone!

There is no question but that if you or I as lawyers were defending the United States in a lawsuit based on the U-2 flight over Russia we could raise many new and novel legal questions. Three examples are: (1) How far up is a nation sovereign over air space? (2) Was not U-2 justified as an act of self-defense, a right conferred upon nations by Section 51 of the United Nations Charter? (3) Can overflight by an unarmed plane constitute an act of aggression? And we would undoubtedly rely upon Russia's failure to protest these flights while knowing—according to Khrushchev—that they have been taking place for the past 4 years as a waiver of any claim of sovereignty violation. Further, Russia herself launched the first satellites and has sent others over the United States constantly—as has the U. S. A. over Russia—every few minutes for the past 2 years with no one protesting that these constitute sovereignty violations even when they admittedly transmit photographs to their launchers.

I believe that an impartial court would hold that Russia's secret "closed" society coupled with her threats based upon her atomic, satellite and ICBM developments, and her announced plans for world domination justifies a defensive measure like U-2 and further that the overflight of an unarmed plane is not an aggressive act within the meaning of the United Nations Charter. The UN Security Council certainly so voted.

The whole problem of the legality in today's world of the "Iron Curtain" itself could be raised in any such lawsuit. I believe that the creation and maintenance of the "Iron Curtain" is itself a crime against humanity—a violation of the U. N. Charter as a threat to world peace. Suppose the United States were to announce tomorrow that henceforth we intend to close ourselves off from the rest of the world. The world-wide shock of such an announcement would be tremendous. And world-wide condemnation would be both immediate, overwhelming and deserved. Who can doubt that Russia itself would lead a chorus of finger pointers questioning whether or not we were invoking secrecy to plot aggression!

Every journey begins with the first step and if U-2 triggers steps toward the formulation of new law rules for overflights of unarmed aircraft and new rules for the operation of satellites over other nations, before great war-ex-

ploding incidents occur, mankind will have profited greatly by that ill-fated flight.

Also, if the jarring U-2 episode helps in getting rid of secret "closed" societies—just by its world spotlight upon their existence and evils—it obviously will have furthered peace in the world. Vice President Nixon last April in discussing the Summit's possibilities put it well when he said:

We must make evident to the entire world if the Soviets are willing to consider some progress toward the kind of open society which we in the West maintain, both disarmament and peace itself can become realizable objectives rather than hopeless dreams. The closed society of the Soviet Union is, in fact, the major barrier to the disarmament which the great majority of the people in all nations want.

"Open skies" like "open seas" would serve all mankind. Grotius postulated the "open seas" doctrine in 1605 and it took over 200 years before it was fully accepted as universal law. Let us hope the "open skies" doctrine receives a more speedy acceptance as universal law.

I shall not go further with things U-2 or the Paris Summit collapse should stimulate in the field of law growth. Suffice it to say I have only scratched the surface.

Law enforcement internationally and law growth internationally are both hampered by lack of adequate dispute settlement machinery. Disputes are inherent in the nature of man and nations but since the beginning of time man has created only three methods for resolving such conflicts: (1) Brute force by fists or weapons, (2) Voluntary agreement by discussion and negotiation between parties, and (3) Third party decision in an impartial tribunal.

Use of presently available weapons between nations is too horrible to envision as a method of deciding disputes. This merely underscores the fact that new methods of war making must be combatted by new methods of peace making.

Settlement of disputes by voluntary agreement has sometimes proved to be impossible in the past with the result that wars have occurred down through the ages. Nothing in the record of this method proves its ingredients can prevent wars in the future any more than they have in the past.

The one permanent institution we have for impartial third party decision of disputes internationally is impotent and therefore unused. It is the World Court created to substitute justice of the courtroom for slaughter of

the battlefield. This Court is impotent and unused because the United States Senate insists upon its so-called Connally Amendment—attached by Senator Connally in 1946 to our acceptance of the Court's jurisdiction—long before Russia's acquisition of the A-bomb, satellites and ICBM's so radically altered the international picture as to enhance immeasurably the attractiveness of decision by court instead of by battle. The Connally Amendment bases World Court jurisdiction on our case by case consent, and under the doctrine of international reciprocity this confers the same right upon all adversaries we bring to that Court. Disarmament, nuclear test ban and other violators will never voluntarily consent to be tried for their violations. This 1946 roadblock to the door of the World Court is thus obviously out of date in 1960 and should be speedily repealed. Recent Senate Committee action delaying a vote on Connally elimination is a serious evasion of major responsibility in advancing world peace. International law will never achieve and maintain peace without a real Court. That we should be the nation to still insist on trial by battle rather than trial by court is shocking to say the least. Few concrete steps would do more to refurbish our prestige and moral leadership toward world peace than the elimination of the Connally Amendment. Such a meaningful step would demonstrate to a watching world our belief in and adherence to law rather than to force at this crucial juncture, and we would help silence Khrushchev if we challenged him to do likewise. We need to get off the defensive and onto the offensive on the issue of peace. Ending the Connally Amendment is an offensive step the peoples of the world would comprehend and applaud.

So here too there is a tremendous amount of work for lawyers with many among our own profession leading the battle to keep the World Court impotent as an instrument for world peace. The Connally Amendment has clouded and impaired our moral leadership of the Free World by providing concrete evidence that we distrust the rule of law internationally. Let us remind those who argue that the Court might possibly hand down an erroneous decision that a decision contrary to law or fact can always be changed whereas millions of gravestones the world over are rather mute testimony to the unchangeability of the results of war.

Regional institutions such as the Supreme Court of Europe which decides legal disputes arising out of the European Economic Community should be created all over the world. That Court's successful acceptance and extensive use in resolving present disputes between nations who previously for centuries engaged in bloody wars to settle their disputes is strong evidence that the World Court will work if but used. And the European Court's success

is evidence also that a whole system of regional international courts are needed to decide small international legal disputes before they fester and grow into great inflammatory and almost insoluble political disputes involving a nation's pride and vital interests on which she cannot then back down.

Secretary Herter concluded his statement to the Senate Foreign Relations Committee on U-2, the Summit failure and hopes for a peaceful future as follows:

We have our own programs for helping to bring that future about—for holding high the light of freedom, for sharing its message and rewards with emerging nations, for trying to create an international community in which the rule of law will replace the rule of force. It is to these programs that our talents and energies should be rededicated in the uncertain times that lie ahead.

I hope this means that in addition to the private effort of lawyers herein described the Federal Government is now prepared to launch an all-out effort in the legal field to improve and expand law internationally. So far the Government has spent billions on science and the military to keep the peace. Few expenditures would yield more for the good of Americans and all mankind than Government financed research teams of legal experts working in universities and elsewhere on ways and means of improvement and expansion of the rule of law in the world community. The President has a special scientific adviser to energize our effort in science but no one in the Federal Government has the specific full-time assignment of energizing an all-out effort to bring international law and institutions up to date.

This has been a brief outline of some of the highlights of the lawyers' program to achieve world peace through the processes, principles, procedures and institutions of the rule of law. From what I have said you can envision our objectives and the path we expect to follow. In end result our effort should aid in creating a universal "Law of Nations" giving legal form and expression to the great moral principles embodied in the rule of law concept.

I cannot emphasize too strongly that in seeking a world rule of law ours is the strategy of gradualism. We do not expect to create a "law-ful" world full-blown, at one stroke, overnight, or in a year, or in several years. It will take years and perhaps decades of great effort.

We are not going to make the mistake of attempting more than we can really accomplish. Nor do we propose to flounder on the peril of perfection-

ism. After thousands of years, we are still improving local law, state laws, national laws, local courts, state courts and national courts. If we waited until our traffic laws and courts were perfect, for instance, before we allowed traffic to move, our streets would be empty of cars. We will make a start on the problems and needs that exist in the international law field and work then for refinements and strengthening of our first efforts.

The greatest need of our day is for leadership on the issue of world peace. Leaders who can visualize and utilize the dramatic scientific advances of our day for man's benefit rather than his death. Leaders who realize that the rule of law offers the most universally acceptable and usable concept to achieve mankind's greatest need and desire—a peaceful world community.

No effort is too great, and no effort is wasted, which seeks to strengthen and develop forces by which the people of the world will move toward better mutual understanding, trust, and good will; for these alone are the bases upon which can be built a world-wide rule of law to bring peace to all mankind.

In concluding, may I say to you members of this Class of 1960 that you are, or you should be, deeply committed to work for the cause of peace, for you have been deeply involved in the results of war. You were born when that reckless madman, Hitler, was at the height of his power, a time when the world tottered on the brink of war. You were hardly more than babies when the world actually went over the brink, and a grim and terrible conflict ensued. You were still young children when World War II ended, but to some of you, I have no doubt, that war came very close. Your fathers may have fought in it; some of them may have died in it. You grew up in the era of the Cold War; you were in your early teens when that war turned "hot" in Korea. For you Khrushchev's belligerent blathering carries a special personal meaning because some of you already have seen military service; for many of you it is imminent or will be more so if the world situation worsens.

To you who have lived all your lives in the shadow of war or threatened war, there should be few things more important than the way to a permanent and lasting peace. No generation ever born had greater cause to hope and work for the universal establishment of the rule of law. Believe in it and work for it. The universal rule of law is the only way to both achieve and maintain peace. There is no truth I believe in more. There is no greater goal for any generation than to be dedicated to its attainment.

It has been truly said that an idea can be more powerful than an atom, and that nothing can deny an idea whose time has come. Let us work toward, and pray together for, the arrival of the day when the idea of law replaces terror in the control of the fate of humanity. The day when all men live—nationally and internationally—under the rule of law, and man can walk anywhere on the face of the earth in freedom, in dignity and in peace.