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Box 16, Folder 14, Eichmann, Adolf - trial, 1961.

THE AMERICAN JEWISH COMMITTEE

Date: March 30, 1961

To: John Slawson Sam Kaminsky
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Lucy Dawidowicz Edwin J. Lukas
Robert Disraeli Ethel C. Phillips
S. A. Fineberg Norman Podhoretz
Morris Fine Harold Steinberg
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From: Rabbi Marc H. Tanenbaum, Director
Interreligious Affairs Department

Subject: Analysis of the Eichmann Case

This is a preliminary report on the first results of the efforts of the AJC Interreligious Affairs Department to project the moral perspective on the Eichmann Case in a number of areas affecting public opinion:

- 1) Attached is a copy of a feature article prepared at our request by George Cornell, Religion Editor of the Associated Press, which will be syndicated on Friday, April 7th, to all the A. P. affiliated newspapers. Note that Cornell quotes the American Jewish Committee analysis of the Eichmann Case. Also note that he cites the better statements from Rainhold Niebuhr's editorial in Christianity and Crisis. Dr. Niebuhr wrote the editorial following a meeting with David Danzig and myself.
- 2) The Religion Editor of Time Magazine has agreed at our request to try to influence a more positive treatment of the Eichmann Case from our point of view in a forthcoming Time cover story on Eichmann. The Time Religion Editor has received a copy of our analysis and has offered to make it available to the writer of the cover story, as well as to speak to him and to reflect our concerns. I will be having a meeting with this editor next week to pursue this.
- 3) The Eichmann analysis and a personal letter has been sent to the Religion Editors of all New York daily newspapers and to the U.P.I., Religious News Service, and Newsweek Magazine. Telephone conversations will follow.

Our Department has distributed the Eichmann analysis
to:

CHRISTIAN COMMUNITY

- 1) The Catholic and Protestant participants in the Four-C's Conference, with a special covering letter.
- 2) The major Catholic and Protestant weekly and monthly journals with a covering letter.
- 3) Key people in the National Council of Churches.
- 4) Key people in the National Catholic Welfare Conference.
- 5) Key people in the major Protestant denominations (mainly our contacts in International Affairs, Social Action, Church Women's Groups, Publications, etc.)
- 6) A selected list of local State and Municipal Councils of Churches.

JEWISH COMMUNITY

- 1) The A.J.C. "B & C" list of Rabbis with a covering letter. (The "A" list received a memorandum with a covering letter from Mr. Ehrmann.)
- 2) Key people in the Six national Jewish religious agencies. (Orthodox, Conservative and Reform Congregational and rabbinic agencies.)

Attached are copies of the covering letters sent to the Christian and Jewish contacts described above.

Additional outlets that should receive our memorandum:

- 1) Religion Editors of the major daily newspapers throughout the country (outside of New York City.)
- 2) Religion Directors of national TV and Radio networks.

(Advance for AMS of Friday, April 7, from AP Newsfeatures)

Religion Today
by George W. Cornell
Associated Press Religion Writer

(advance) Only one human being will be in the dock. But in the eyes of many religious leaders, so will all humanity.

They see the trial of Adolf Eichmann, scheduled to begin next week in Israel, as pointing up anew a grim and stark moral lesson:

The evil residing in human nature.

The facts brought out undoubtedly "will have a cathartic effect upon the conscience of mankind," says theologian Reinhold Niebuhr, of Union Seminary.

"It will remind the whole world of a chapter in German and also in human history that we would all like to forget."

On that general point, psychiatrist Karl Menninger recently spoke of a widespread American "tendency to deny evil to deny its presence in ourselves."

Although it is Eichmann who stands accused as the Nazi slaughterer of millions of Jews, some religious spokesmen say that the guilt was not his alone, nor wholly that of the Nazi only.

"Adolf Eichmann is a symbol of Christian failure," says the Rev. Donald W. McKinney, of Brooklyn. He says that other countries merely "waited and watched" as Hitler began his anti-semitic program in the 1930's, and adds: "If only by its silence, the rest of the world gave its permission. It didn't care."

The American Jewish Committee, in a comprehensive analysis of the Eichmann case, says it "should make us confront...the meaning of hatred and totalitarianism, our own relation to these evil and their continued presence in our modern world."

The study notes that in World War II, the Nazis, through Eichmann and others, offered to trade Jewish lives for supplies and other military advantages, but these "offers were rejected" by the Allies.

"People who might have been saved were murdered. Obviously, the Nazis were the murderers, not the Allies. Yet were all completely guiltless?"

Dr. Niebuhr, writing in Christianity and Crisis, says the trial concerns not just an individual, but "a collective crime, involving a whole corrupt government of a nation that had left all norms of humanity..."

The case has aroused a maze of international questions. Some religious leaders and others have questioned Israel's jurisdiction, and the action of her agents in abducting Eichmann from Argentina where they caught him.

The American Council of Judaism and its president, Clarence L. Coleman, Jr., of Chicago, have been among the strongest critics. Coleman assails what he terms "Israel's conception of itself as the representative of all Jews" in the case.

He says Israel lacks legal rights to try Eichmann, that it apparently plans a mere "show trial," and that it violated Eichmann's "political asylum" in taking him out of Argentina, thus betraying traditions of justice itself.

Commenting on these and other points, the American Jewish Committee notes that wartime Allied leaders promised to seek out and punish Nazi war criminals, but that Eichmann remained at large 15 years until Israel captured him.

No other country or group of countries has asked to try him, and it is unlikely that an international body could be formed to do so in light of the cold war, the study says. It adds, concerning Israel's jurisdiction: "every independent state has in international law jurisdiction to punish pirates and war criminals in its custody regardless of the nationality of the victims or the place where the offense was committed."

The Committee notes that Israel apologized for violating Argentina's sovereignty, and the apology was accepted. A similar case, in which a U. S. officer seized a fugitive in Peru and brought him home without extradition proceedings, was pointed out.

The study raises the question whether the trial, 16 years after the war's end, will serve to show that time will not bring immunity from such atrocious crimes, "or is all punishment merely vindictive?"

The Nazi program for the "destruction of human life," the committee says, was unprecedented in history, since in other ruthless slaughters, the killing was to achieve some purpose, such as victory and the victims could save themselves by surrender.

"But Nazi genocide was an end in itself, not a means...a bureaucratic, technological spirit put planning, research and administration at the service of depravity...these same tendencies can be found today in many parts of the world.

As to the penalty to be meted out in Eichmann's case, some religious leaders have suggested that the overall moral implications are more important than any punishment. Rabbi David Polish, of Evanston, Illinois, says: "It would be worth sparing his miserable life if the true lesson which his capture made possible is brought home to a world that has not yet felt the full measure of its guilt and sinfulness."

End advance for AMS of Friday, April 7

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THE AMERICAN JEWISH COMMITTEE

Institute of Human Relations • 165 East 56 Street, New York 22, N. Y. • Plaza 1-4000 • Cable Wishcom, New York

April 3, 1961

Dear Friend:

In light of the growing interest in the Eichmann case, particularly among religious leaders, I thought you would be interested in the enclosed analysis of the moral and legal aspects of the trial just prepared by the American Jewish Committee.

You might find this analysis useful for distribution among your national and local constituency, as background for public statements, adult education discussions, sermons, congregational bulletin, and for articles and editorials in the Church press. If you can use additional copies, please do not hesitate to ask for them.

I would appreciate your letting me know what uses you have made of this analysis.

As you know, I have just assumed the position of Director of the Department of Interreligious Affairs of the American Jewish Committee. I regard as one of my primary responsibilities the developing of an effective two-way communication between ourselves and trust that the sharing of this kind of information will contribute toward this relationship.

With warmest regards, I am,

Cordially,

Rabbi Marc H. Tanenbaum, Director
Interreligious Affairs Department

MHT:as
Enc.

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MEMORANDUM

Mare Terman
THE AMERICAN JEWISH COMMITTEE
INSTITUTE OF HUMAN RELATIONS
165 East 56th Street, New York 22, N. Y. • Plaza 1-4000

from the desk of ISAIAH TERMAN
Director of Communications and Servicing

TO: Area Directors and Executive Assistants
FROM: Isaiah Terman
SUBJECT: TV-Radio and the Eichmann Trial

TOP
PRIORITY

Presumably, you are now or will soon be initiating discussions with TV and radio broadcasters, through appropriate local committees, concerning the handling of the Eichmann trial. The bulk of the material to be broadcast will come from the national networks. Judging by the information given below, there is reason to hope that network officials will be judicious in their selection. As local stations have considerable autonomy in determining what network material they will use, it is important to enlist their good offices to make doubly sure that harmful films and other programs will be kept in check.

The following information, not for publication, is furnished by our Radio-TV division as an aid to you in conducting discussions with local broadcasters.

An informal luncheon meeting was held with top network executives and AJC staff specialists to discuss the public relations aspects of the Eichmann trial as they relate to the American scene.

Dr. Slawson briefly described the work of the AJC and summarized the issues covered in a draft of our fact sheet on Eichmann (soon to be released). He emphasized that, in our opinion, the purpose of the trial is to make us confront, however reluctantly, the meaning of hatred and totalitarianism, our own relations to them and their continued presence in the world today.

In response to a question from the group on whether Israel has jurisdiction in the case, he cautioned the visitors not to let the magnitude of the crime be clouded by the question of Israel's right to try Eichmann. Israel is not on trial -- Eichmann is.

Dr. Slawson discussed the dangers inherent in broadcasting all the horror films presented in evidence, or in supplementing film footage of the trial with concentration camp films. Excess violence may produce guilt, paralysis in the viewer, or even breed violence. He urged that care be exercised in the selection of language to describe the crimes.

Copies of the fact sheet, of the Milton Katz article from the Harvard Law Record, and of the Bulletin of the German Government were distributed to the guests.

The broadcasters felt that it had been a very worthwhile session and would provide guidelines for their coverage of the trial.

Broadcasters and telecasters will have many opportunities to turn attention from the unchangeable past to the meaning of the Eichmann trial for now and tomorrow. Such themes as "This must never happen again anywhere to any people" and "This is the result of letting bigotry grow; the time to combat bigotry is now" can be frequently injected.

In accordance with Dr. Slawson's request, please proceed immediately to arrange meetings, such as the one described above, with TV and radio executives in your communities.

The three documents mentioned above will be sent to you Monday.

3/24/61



MEMORANDUM

THE AMERICAN JEWISH COMMITTEE
INSTITUTE OF HUMAN RELATIONS
165 East 56th Street, New York 22, N. Y. • Plaza 1-4000

from the desk of DR. S. ANDHIL FINEBERG
Community Relations Consultant

CAPITAL PUNISHMENT AND THE EICHMANN CASE

Since the announcement of Eichmann's apprehension more than 18 months ago in the Argentine, questions have been raised which obscured in public and private discussion the genuine and most basic issues. For a time it seemed that legalism would outweigh the requirements of justice. Interest in the case may now become impaled on the question of capital punishment. The findings of the court should move mankind to develop laws and educational systems that will save many millions from similar fate in the future. The fate of mankind is now at stake. But all of this may be put out of mind while the fate of one guilty prisoner is debated.

An editorial in the December 16th New York Times, commenting on the court's verdict recommended "that Eichmann live as a prisoner..." This morning's New York Herald Tribune quotes rabbis pro and con on the subject. Someone may broadcast the fact that for over 2,000 years Jews have cheered joyously in the synagogues when the Megillah readers annually told of the hanging of Haman and his ten sons with him. In contrast to Eichmann, Haman did not succeed in bringing about any Jewish deaths. Material for a confusing and embarrassing debate over capital punishment in Jewish tradition is available, but this is a poor time to engage in it.

We have been made aware that highly educated people fascinated by standards of perfection can divorce their reasoning from reality with lamentable results. An example of this occurred in a pamphlet by Yosel Rogat, "The Eichmann Trial and the Rule of Law" published by the Center for Study of Democratic Institutions. Mr. Rogat on the last page asks, "Are we, then, certain that our own motivation for wanting to punish the Nazis has in it as little as possible of the very gratification in applying punishment that they themselves felt?" Here, the word "punishment" is used to equate the annihilation of six million innocent people who never had a trial and were put to death merely because they were Jews, with the legal punishment of their murderer. It is not surprising that this author concludes that Eichmann should have been tried before an international court, although legal authorities now concede that none existed or could be created.

Had the Israeli authorities yielded to the clamor of critics, Eichmann might not have been tried anywhere. Now that a highly competent court was convened and that the trial was conducted with great judicial deliberation and with meticulous attention to propriety, constituted authorities should not be subjected to public pressures. Private channels to the Israel authorities are open and available

to all. Private intercession is everyone's right if he wishes to appeal for clemency. Public debate making it seem that Israel is a culprit from whose wrath Eichmann should be rescued would be a disservice to humanity.

Several leaders of the American League to Abolish Capital Punishment, of which I have been a member for some years, have assured me that the League is too concerned with advancing the principles on which abolition of capital punishment must rest, to issue any pronouncement on the Eichmann case. The principles gain acceptance when cases are cited wherein prisoners sentenced to die have more, not less, right to life than in usual cases.

A suitable statement in reference to Eichmann's punishment would be, I believe. "Too many greater issues are at stake to warrant my taking a public stand on that question. I believe that justice will be done, whatever happens to him."

Adolf Eichmann's crimes, as Martin Buber and others have observed, are so monstrous as to make any penalty "meaningless." The wisest and best of men will not agree about what should be done in this extraordinary case. The few men upon whom destiny has placed the responsibility of determining the penalty cannot satisfy all wishes. They must proceed with courage, conviction and confidence. They are certainly as eager as anyone else to do what is right in the sight of Heaven.

The ancient Hebrew adage applies here: "Ye wise men, be careful of your words." To say that Eichmann's fate is a mole-hill and then make a mountain out of it is a masterpiece of self-contradiction.

RABBI S. ANDHIL FINEBERG, D.D., Ph.D.

December 18, 1961

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THE AMERICAN JEWISH COMMITTEE

Transmittal

Date March 21st

TO: Mark Tenenbaum

FROM: S. ANDHIL FINEBERG

- For approval
- For your information *This went*
- Please handle *to JF*
- Please talk to me about this *rabbis!*
- Read and file
- Reply for my signature *Just*
- Returned as requested *March 17.*
- Please follow up
- Telephone me
- Your comments, please
- Please furnish information
- Read and return

Remarks:

MEMORANDUM

THE AMERICAN JEWISH COMMITTEE
INSTITUTE OF HUMAN RELATIONS
165 East 56th Street, New York 22, N. Y. • Plaza 1-4000

from the desk of DR. S. ANDHIL FINEBERG
Community Relations Consultant

THE IMPACT OF THE EICHMANN TRIAL ON AMERICANS

Some Suggestions for Local Programming

I. The purpose of this memorandum:

On December 20, I issued a memorandum on "How the Israelis View the Eichmann Trial." It presented the reasons for Israel's staging a trial that will last for at least three months and which will produce many volumes of testimony.

The main objectives of Israel's government (as related to me in Israel) may be summarized thus: (1) to establish an authentic record of the genocide; (2) to warn predatory politicians who may contemplate similar mass murder; (3) to remind nations that bigotry may lead to catastrophic calamities; (4) to reawaken sympathy for Nazi victims and for Israel, which was created largely because many survivors of Nazism had no other place to go.

If the trial were to accomplish these four aims, and have no other results, it would bring great profit and no harm to Israel, to the Jews and to all peoples of all lands. The matter is not that simple, however. A great deal of antagonism has arisen because Eichmann was seized in Argentina and spirited away to Israel. Some believe that reviewing the role of the Jews as scape-goats will injure Jewish status. Some of the revelations may have had repercussions. Reaction to the Eichmann trial is not altogether favorable.

II. The Argentine Episode

Eichmann was on the soil of another sovereign nation, when without regard for legalities, representatives of the Israel government seized him in the Argentine and carried him off. Unless Israel is prepared to grant others the right to abduct criminals from Israel and from other countries in order to bring them to the bar of justice elsewhere, no one should argue on behalf of Israel that this kidnapping was legally justifiable.

Yet, the extraordinary character of Eichmann should be recognized. He had hidden successfully for 14 years despite intensive search. He had been captured by Americans and escaped. The whole

history of the man points to his being an extremely difficult person to hold even when apprehended. The Israelis had reason to fear that he probably would again evade justice unless they seized and held him. He might even have claimed "political asylum" successfully, since there is no international agreement on who is entitled to "political asylum." Israel's capturing Eichmann prevented the colossal injustice of his living out his life without ever being arraigned for his crimes.

The Argentine and the United Nations have accepted Israel's explanation and have closed this matter. Further argument will not change the actual situation. Although snatching Eichmann out of the Argentine was obviously improper, in the view of the Argentine government and of the United Nations, his seizure was pardonable.

III. Israel as the Site of the Trial

We shall probably never cease to hear objections to Israel's trying Eichmann. The fact that Eichmann and his lawyer have thus far made no protest nor asked for change of venue seems to be overlooked. Robert Servatius may throw a bombshell at the beginning of the trial. After great preparations to defend Eichmann in Israel, he may still argue that Israel lacks jurisdiction. But then he would be asked, "Who has jurisdiction?" If Servatius then says, "No one has jurisdiction" the obvious implication that his client should go free, would bring repercussions far from helpful to his client. There is no international criminal court. The Nuremberg trials were held prior to the formation of the United Nations. At that time the victorious nations were united and set up this trial for the highest ranking Nazis, one of whom, Martin Borman was tried in absentia and condemned to death. If Borman is ever captured, and he is one whom Jews have reason to bear particular enmity, there will be no need for a trial since his sentence was pronounced at Nuremberg.

It is impossible to reconstitute the Nuremberg trials. To set up an international criminal court would require agreement among nations who are now hostile. One could not, for example, imagine East Germany and West Germany conducting a trial for Eichmann jointly. Nor can we expect the nations of the world to decide who would be the chief justice and which nations should provide the other judges. If it were an international court, where should it meet, in East Germany or West Germany? If in one country where Eichmann operated, why not in one of the others? While we would prefer that Eichmann be tried in an international court, by the United Nations or the like, the United Nations has no provision for conducting such a trial. No government has requested that he be tried by an international court. No nation has asked for him. No nation would thank Israel for saying, "Please take Eichmann and try him." All such proposals have come from private individuals and other non-governmental sources.

IV. The Problems of International Law

There is an excellent article in the February 16 issue of The Harvard Law Record in which the Eichmann case was discussed by professor Milton Katz, director of International Legal Studies at the Harvard Law School. Dr. Katz pointed out that, "Unless a legal system and hard-working lawyers are available to handle the thousands of small "details" through which these problems manifest themselves, the details might slowly snowball into one big concentrated aggravation of unmanageable mutual irritation that might explode." Dr. Katz has suggested the development of an international criminal court and a code under which people like Eichmann can be tried. He wrote, "In the terms of our own profession, they also constitute a challenge to legal imagination, legal wisdom and legal craftsmanship."

After the Eichmann trial is over, the world may overlook the lack of a system of an adequate international criminal jurisprudence. The subject has been dormant on the agenda of the International Law Commission of the United Nations. The lack of an appropriate criminal court may again come to light when some similarly guilty person will be available for trial. The average person is not equipped to deal with this problem. Those who can contribute and are interested in the case from a legal standpoint should be asked to deal with it in regard to tomorrow's difficulties rather than spend more time bickering over Israel's right to try Eichmann.

V. The Genocide Convention

In June 1947, the Consultative Council of Jewish Organizations of which the American Jewish Committee is a member declared,

"The unanimous adoption by the General Assembly of Resolution 96, affirming that genocide is a crime under international law which the civilized world condemns and accenting the need of preventive measures to discourage the commission of this crime in the future, is an event of great historical significance. Men of good will throughout the world hail the Resolution of the General Assembly as a major step towards lasting peace and security, and look forward to its earliest implementation by the international community."

From 1947 to 1952 the American Jewish Committee and other American organizations sought to persuade our own government to ratify the Genocide Convention which our nation had helped to initiate. Although sixty-four other nations have ratified the convention, the United States has not. It is unnecessary to describe the Genocide Convention or to explain in this memorandum why the United States has not ratified it. But the decline and virtual disappearance of interest in the subject is noteworthy.

Genocide was perpetrated by a highly advanced nation less than

twenty years ago. The Eichmann case will bring the subject of genocide before the public again. This may be the last opportunity to obtain ratification by the United States. Surely our nation's endorsement would have a salutary effect on international morality. Bringing this possibility into focus nationally and locally, may be one of the benefits of the Eichmann trial.

VI. A Problematic Distinction

Eichmann's crimes were all inhumane crimes, although those against Jews and non-Jews have been charged in different counts, four against Jews, and seven against humanity. There is no moral distinction between the mis-treatment or in the massacre of one group or another. Americans are accustomed to thinking that the group identity of the victim is of no consequence when crime is committed. The fact that anti-Semitic murder is basically the murder of human beings should not be clouded by the Eichmann trial. In the Genocide Convention there is no room for distinguishing between victims on the basis of race, religion or ethnic origin.

VII. The Proper Theme: "It Must Not Happen Again"

There is a tendency to assume that portraying horrors of the past is sufficient to prevent their occurring again. This belief has been voiced endlessly in connection with the Eichmann trial. Yet, it is doubtful that the mere recital of wrongs results in preventing their recurrence. Usually a well-publicized kidnapping, Swastika smearing or the like is followed by more of such incidents. The children of drunkards and slovens rarely profit by adverse example. What we know about scape-goating does not confirm the belief that yesterday's victims of persecutions and discrimination are assured good treatment though their plight is well known. In fact, "the bleating of the lamb excites the tiger." Even lacking incontro- versial proof that retelling the Eichmann story will not prevent massacre from happening again, we should promote comments and interpretation by clergymen, educators, journalists and the like in which "it must not happen again," will be the predominating note.

To be effective and genuinely humane, the discussion should not be limited to the caution, "it must not happen again to Jews." Rather it must not happen to any people. Christian leaders may well be challenged to recognize the fact that their religion somehow failed to prevent this catastrophe in a Christian nation. Other influences which should have likewise prevented this disaster were also at fault. Everyone who has undertaken to play a role in the elimination of intolerance should be stirred by the Eichmann trial to renewed and increased effort.

VIII. Injecting Appropriate Concepts

Controversial questions about the trial and details of the

horrors of Eichmann's career captivate audiences as would dramatic fiction. But we should not let this drama pass without impact other than the effect created by the sensational and controversial aspects.

Constructive concepts can and should be injected before and during the trial. If we are watchful and take advantage of the public interest in the trial, it can be used as an incentive for human relations studies, for seeking ways to prevent genocide and for other programs which will lead to beneficial gains for humanity. The national promotion of such endeavors and activities will, of course, be pursued by the American Jewish Committee. A fact sheet is being prepared for opinion molders which will be useful for national and local press, radio, television etc.

Much can be accomplished locally because of the presence at a university, for example, of faculty members who deal with political affairs, law school instructors and prominent lawyers within the community. They can form a committee to consider the formulation of needed international criminal laws. They can send recommendations to the American Bar Association.

Regardless of the approaches the national organization will make to newscasters, to newspaper syndicate heads and the like, the processes of education in a matter such as this need grass roots implementation. When the goals and objectives of a program on Eichmann are properly conceived, there is work to be done among local clergymen, (to offer another example). Unless the clergymen understand the moral concerns and can present these to their congregations, national effort will remain inadequate. It is therefore suggested that you carefully consider the resources within your own area, choosing institutions and individuals, through whom the ideas which will be presented in subsequent sections of this memorandum, may be conveyed.

IX. Local Programming in the Eichmann Trial

Although American Jews are not responsible for what Israel does, we have a genuine stake in the Eichmann trial. Everyone has. This cause celebre with its intense international publicity, holds potential good or harm for humanity. The fact that Eichmann destroyed people (of whom more than a million were children under fourteen years of age) solely because they were Jews, makes it impossible to try him without constant reference to "Jews."

The court proceedings will determine most of what will reach the public. Yet there will be occasions for interpretation and opportunities for promoting socially constructive concepts. It is also necessary to correct erroneous opinion.

It should not be difficult for a local organization such as the American Jewish Committee Chapter or Unit, to undertake public local

education during the Eichmann trial which unless again postponed, will begin April 11th and will in all probability continue for at least two months. Even in small communities an individual can form a group of concerned people who can plan and implement such a program. Questions to be raised by those who plan local activity may well include the following:

1. What are the ideas we would like to circulate at this time for the benefit of mass audiences?
 - (a) Are there local people or some who can be brought into the community to present the subject before audiences, as well as on radio and television?
 - (b) Would it be advisable to have one or several persons talk to local editors and journalists about the Eichmann trial so that the local press will comment constructively?
 - (c) Are there organizations both Jewish and non-Jewish whose interest in human relations is such that they will be able to discuss this trial constructively? How can we educate more people about the lessons to be drawn from a dramatic review of European Jewry's catastrophe which the Eichmann trial will provide?
2. What should be done to reassure victims of Nazism in the community that the dire developments which will be reviewed on T.V. and in the press are entirely unlike the experience of the American Jews and that the Jews of America are not seriously menaced by anti-Semitic elements, such as the tiny American Nazi Party?
3. What assistance can be given to the local school system and especially teachers whose classes are almost certain to discuss the trial, so that they may interpret the Eichmann trial beneficially to their pupils?
4. What approach should be made to legal experts in the community who are inclined to dwell on the legality of Israel's trying Eichmann, in order to direct their thinking along the lines of strengthening international law and the eventual development of an international criminal court?
5. How can interest be aroused locally in the genocide convention? What can be done to encourage the President to recommend its ratification by the United States Senate?
6. Should there be a local committee functioning during the trial which will circulate helpful facts and constructive suggestions through various channels? Who should serve on this committee? How often should it meet? (There can be several such groups in the community but they should consult and should cooperate with each other.)

S. ANDHIL FINEBERG

3/17/61



THE AMERICAN JEWISH COMMITTEE

Institute of Human Relations • 165 East 56 Street, New York 22, N. Y.

THE EICHMANN CASE Moral Questions and Legal Arguments

THE CHIEF PURPOSE of this analysis is to emphasize certain moral questions implicit in the trial of Adolf Eichmann which are in danger of being beclouded or even brushed aside. As discussion tends to center on more sensational and superficial aspects of the case, leaders of public opinion can render a lasting service by restoring proper emphasis to those issues of conscience which have the highest claim on the attention of Americans and indeed of all mankind.

This presentation also sets forth the contending legal arguments surrounding the case, insofar as possible in the words of various disputants or authorities.

The American Jewish Committee, founded in 1906, is a national, non-Zionist organization which seeks to combat bigotry, protect the civil and religious rights of Jews here and abroad, and advance those rights for all people of all religions and races.

THE BACKGROUND IN BRIEF

If Adolf Eichmann had been captured in 1945, he would have been in the dock at the Nuremberg trials. He specialized in genocide — mass murder of men, women, children and infants by the state for the purpose of destroying a racial, religious, ethnic or national group.

Eichmann's Role

The judgment of the International Military Tribunal at Nuremberg, issued on October 1, 1946, declared:

In the summer of 1941 . . . plans were made for the "final solution" of the Jewish question in Europe . . . the extermination of the Jews . . . a special section in the Gestapo under Adolf Eichmann . . . was formed to carry out the policy.¹

In the Gestapo (Amt IV), the special section headed by Eichmann and charged with handling "the Jewish question" was officially a subdivision of the Reich Security Head Office (RSHA). The International Military Tribunal found all executive and administrative officials of Amt IV guilty of war crimes and crimes against humanity.²

At the Nuremberg trials, defense counsel for the Gestapo and the Sicherheitsdienst (SD) identified Eichmann as one of those personally responsible for carrying out the "final solution of the Jewish prob-

lem."³ His friend and associate, Dieter Wisliceny, testified that Eichmann had "said he would leap laughing into the grave because the feeling that he had five million people on his conscience would be for him a source of extraordinary satisfaction."⁴

In his famous closing address before the International Military Tribunal on July 26, 1946, the late Supreme Court Justice Robert H. Jackson called Eichmann "the sinister figure who had charge of the extermination program" which "pursued Jews in the ghettos and in their homes and slaughtered them by gas wagons, by mass shooting in anti-tank ditches, and by every device which Nazi ingenuity could conceive."⁵

Criminal at Large

A United Nations Security Council resolution of June 23, 1960, recognized "the concern of people in all countries that Eichmann should be brought to appropriate justice for the crimes of which he is accused." United States Ambassador Henry Cabot Lodge said that Eichmann was described in lists submitted to the United Nations War Crimes Commission as a criminal wanted by at least three countries: France, Czechoslovakia and the Netherlands.⁶ French Ambassador Armand Bérard said that for fifteen years Eichmann had been hunted by all police forces.⁷

MORAL QUESTIONS

The trial will recall horrors that many of us — Christians and Jews, Germany and the West generally — would rather forget. For some, the memory will be too painful. For others, the trial will challenge our own outlook on the world, especially our beliefs about human nature. Dr. Karl Menninger has recently spoken of "the widespread tendency to deny evil, to deny its presence in ourselves, and to deny our responsibility for combating it." Stressing the

same point, a distinguished German newspaper recently expressed its sharp disagreement with

those who belabor the procedural inconveniences and oddities of this trial in order to help them close their minds against its content. How tethered to formalities, how heartless indeed, is the thinking of people who measure the worth or worthlessness of this trial by merely outward circumstances . . .

Just as we should not let matters of procedure

¹Office of United States Chief of Counsel for Prosecution of Axis Criminality, *Nazi Conspiracy and Aggression: Opinion and Judgment* (Washington, D. C., 1947), p. 79.

²*Ibid.*, pp. 94-96.

³International Military Tribunal, *Trial of the Major War Criminals*, Vol. XXI: *Proceedings: 12 August 1946 — 26 August 1946* (Nuremberg, 1948), pp. 532-34; Vol. XXII: *Proceedings: 27 August — 1 October 1946*, (Nuremberg, 1948), p. 39.

⁴*Ibid.*, Vol. IV: *Proceedings: 17 December 1945-8 January 1946* (Nuremberg, 1947), p. 371.

⁵Robert H. Jackson, *The Nuremberg Case* (New York, 1947), p. 130.

⁶United Nations Security Council, *Verbatim Record of the 866th Meeting*, June 22, 1960 (S/PV. 866), p. 31.

⁷*Id.*, *Verbatim Record of the 867th Meeting*, June 23, 1960 (S/PV. 867), p. 23.

keep us from seeing the central issue, neither should we occupy ourselves solely with the crimes of Adolf Eichmann. We should not merely be an audience when he is called to account; we would be in for a very unpleasant surprise indeed were we to approach this trial with the attitude that this is no more than the case of "a man who naturally delights in murder. . . ."

Only if we try to become fully conscious of the monstrosity of those events, and only if we are prepared to analyze them, as well as ourselves as we were when they happened, will it be at all possible to "work through" that period of history.⁸

Although vehemently phrased, especially in the first passage, for the benefit of German readers, the principle here enunciated may well be taken to heart by all who uphold spiritual values. Neither religion nor humanism can approve forgetfulness or evasion of the truth. In the eyes of religion, we can repent and reform only if we remember and accept the truth. In the eyes of humanism, consciousness and knowledge must supplant unawareness and ignorance.

The Eichmann case should make us confront, however reluctantly, the meaning of hatred and totalitarianism, our own relation to these evils and their continued presence in our modern world.

1. Why was Nazi genocide unique?

Few wars have taken place without atrocities; persecution and massacre are the fearful commonplaces of history. Yet Nazi genocide was something more than another tragic entry in the long record of human cruelty. Nazi genocide was an end in itself, not a means.

— In the wars of religion, with their ruthless slaughter, each side was fighting for victory. Each would have gladly accepted the surrender and conversion of the other side. Each would have willingly brought up in its own religion the children of the other.

— When Stalin set out to collectivize Soviet agriculture, he killed millions of peasants by shooting, starvation or deportation. But the killing was a means — and when Stalin ordered kulaks killed to attain the goal of collectivization, he did not also order the murder of their orphans.

The Nazis committed genocide for its own sake.

— Jews and Gypsies, and Slavs too, in part, could do nothing to save themselves. They were not allowed to surrender or accept slavery, or even give up their children to be raised by the enemy. They were doomed by their genealogy, which the Nazis decreed a crime.

2. Could it have happened anywhere else?

The circumstances cannot be disputed. At a certain juncture in history, the German state carried out an unprecedented program: the destruction of human life. Nor can the crime be dissociated from German conditions, antecedents, values and traditions. Yet certain elements of the situation were not confined to Germany alone.

— Chauvinism and anti-Semitism were prevalent in other countries. Hitler was widely regarded abroad as a patriot, eccentric in being so intensely anti-Semitic, rather than evil in being anti-Semitic at all.

— A bureaucratic, technological spirit put planning, research and administration at the service of depravity. That spirit rose to dominance as the sense of personal significance declined, as the individual abdicated in favor of the collective and ceased to believe in a moral code that commands, rather than serves, nation, class or so-called race. *These same tendencies can be found today in many parts of the world.*

— Before the war, Hitler met opposition outside of Germany; but he also found much support, more "understanding," and even more passivity. Little was done at the outset to save those who were persecuted and threatened, and during the war to save those about to be murdered. After the war, though the former Allies were not poor in intelligence, Eichmann remained at large for 15 years until Israel discovered him. Argentina made no effort to turn him over. No Allied country offered to try him. Does this, too, show a basic indifference throughout the West, as well as Russia?

In short, how far beyond Germany did complicity extend? Is genocide possible today, perhaps in a different form, perhaps with a change of victims?

⁸*Die Welt* (Hamburg), February 7, 1961.

3. What responsibility rests with the individual citizen?

The present case raises painful questions concerning the responsibility of others besides Eichmann and his fellow Nazis.

— Those who fought nazism or were its victims often faced the necessity of dealing with the Nazis. It may well be argued that every such spokesman appointed by the Nazis to represent a victim community was in effect an agent of the Nazi program.

If we found ourselves in a similar position tomorrow, what decision would we make? Not the least of the evils of genocide is that it places the victims themselves in an intolerable moral predicament.

— Leaders in the war against nazism likewise faced a dilemma. The Nazis, through Eichmann and others, offered to barter human lives for supplies and similar military advantages. Those offers were rejected, and people who might have been saved were murdered. Obviously, the Nazis were the murderers, not the Allies. Yet were all completely guiltless? There is some evidence that certain British officials refused Eichmann's proposal because the release of Jews would have increased the pressure to modify Britain's Palestine policy.⁹

Even where the motives were pure, the decision not to barter had its equivocal side. Suppose Great Britain and the United States had been offered the lives of Englishmen and Americans, rather than continental European Jews. Would rejection have come quite so swiftly?

If a similar situation were to arise tomorrow, what would our leaders do? What would we, as citizens, want them to do? What would be our share in the moral responsibility for their decision?

4. Should the initiators and agents of immoral policy be punished?

During the war, the Allied leaders solemnly promised to seek out and punish those guilty of genocide, no matter how long or difficult the task. Is that war aim still to be honored or is it better forgotten now?

If the purposes of Nuremberg were to punish the guilty and discourage repetition of such crimes, will not the Eichmann trial, 16 years after the war's end, serve all the more to show that time will not bring immunity? Or is all punishment mere vindictive?

5. Is a breach of sovereignty ever justified to bring an admitted murderer to trial?

It is incontestable that Israel violated Argentina's sovereignty. In June 1960, Israel apologized for this act in the Security Council. The apology was subsequently accepted.

6. Would justice be better served by letting Eichmann go free than by trying him in a court whose jurisdiction has been challenged?

These are the real alternatives. There is no international body for trying war criminals, and in the light of the cold war it is hardly conceivable that one could be formed. No country or group of countries has asked to try Eichmann.

— Argentina, which protested Israel's violation of its sovereignty, did not offer to try him. Besides, Argentina has a record of refusing to extradite war criminals to Germany.¹⁰

— Germany, the only nation legally entitled to challenge Israel's jurisdiction, has remained silent.

Typically, a challenge to the conduct of a state under international law may only be raised by the state of which the victim is a national. In the Eichmann case, the only state which could in any international tribunal raise the contention that Israel by the extension of its statutes to conduct which took place within Europe on the part of one not a national of Israel — the only state which can raise that question is the Federal Republic of Germany, (or possibly East Germany if the latter should claim that Eichmann was a national of East Germany.) Neither of those states has manifested the slightest desire to do so. They have let it be understood that they are not interested. They apparently want him brought to judgment, and don't want to intervene.¹¹

⁹Alex Weissberg, *Desperate Mission: Joel Brand's Story*. (New York, 1958), pp. 189-90. (Lord Moyne, Minister of State for the Near East, is quoted as follows "What shall I do with those million Jews? Where shall I put them?")

¹⁰Juan de Onis, "Argentina Cools to Former Nazis." *The New York Times*, June 19, 1960, quoting Buenos Aires' *La Prensa*.

¹¹Milton Katz, "The Role of the Law in International Affairs as illustrated by the Eichmann Case," *New Jersey Law Journal*, January 12, 1961 (The Edwin C. Caffrey Memorial Lecture, sponsored by the New Jersey Institute for Practicing Lawyers, November 14, 1960), p. 7.

JURISDICTIONAL QUESTIONS

We now turn to legal arguments bearing on Israel's jurisdiction.

1. Is Eichmann properly before the court?

This is essentially a question of whether Eichmann's rights were violated, or violated to such a degree as to invalidate Israel's jurisdiction. Argentina's rights are not at issue; as already noted, Israel admitted the offense against Argentina and apologized.

Objection

- For more than a century, men interested in freedom sought to secure recognition of the right of refuge. . . . The underhanded kidnapping, the violent spirited of an individual away from a foreign jurisdiction, which until now has been characteristic only of Czarist, or Nazi or Communist police, certainly does violence to that conception.¹²
- The kidnapping of Eichmann is an act of lawlessness of exactly the type of which the Nazis themselves (and the Stalin and Trujillo regimes) have been guilty.¹³
- The rule of law must protect the most deprived of criminals if it is also to stand as a bulwark against the victimization of the innocent.¹⁴

Response

Eichmann had no right to refuge.

- The laws of extradition were designed to protect individuals wanted for trial by one country and residing in another, either from unfair trial, or from prosecution for acts whose criminality was disputable. . . . None of these factors applied to the case of war criminals. Their crimes were of such a heinous nature that there was no doubt as to their degree of criminality, and it was, therefore, even necessary to ensure that the normal procedure of extradition was not unwittingly applied in their case, and surrender refused on the grounds that the crime was of a political nature. . . . Consequently, the rules, procedures and machinery advocated by the Commission and those eventually devel-

oped by Allied Governments and military authorities were from the outset divorced from the peacetime notion of extradition. A technical distinction came to be drawn between *extradition* proper and the *surrender* of war criminals.¹⁵

- About a hundred years ago . . . Illinois wanted Kerr for embezzlement. He had . . . traveled to Peru. . . . The President of the United States . . . issued a warrant to an appropriate officer . . . to request extradition of Kerr . . . he decided not to present his commission . . . to the Peruvian authorities. He found the man and confronted him with a gun and . . . brought him back to California. The California authorities . . . helped to ship the prisoner to Illinois, where he was . . . convicted. . . . It was pointed out that he had been kidnapped by an official, his rights had been violated not only by Federal officers but by California . . . and . . . Illinois officers, and that on top of everything else the actions of the President's emissary had been in violation of our treaty with Peru.

The Supreme Court said this might well be true; Peru might very well have a grievance against the United States, which it could press through appropriate international channels; the prisoner perhaps might some day have a claim against the people who had kidnapped him; but nevertheless there was nothing wrong with the Illinois judgment of conviction. . . . There is nothing, said the Supreme Court of the United States, which we can do about it, nor indeed which we ought to do about it.

That has come up at least five times in the past hundred years in the Supreme Court of the United States, and on each occasion the Supreme Court has taken the same position.¹⁶

- Article 14(2) of the Universal Declaration of Human Rights specifies that the right of asylum may not be invoked "in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

- By signing the resolution of the Pan-American

¹²Oscar Handlin, "The Ethics of the Eichmann Case," *Issues*, Winter 1961, p.7.

¹³Erich Fromm, "Trying Eichmann" (letter), *The New York Times*, June 17, 1960.

¹⁴"The Eichmann Trial, II" (editorial), *ibid.*, June 18, 1960.

¹⁵United Nations War Crimes Commission, *History of United Nations War Crimes Commission and the Development of the Laws of War* (London, 1948), p. 392.

¹⁶Katz, *loc. cit.*, p. 7.

Conference on Problems of War and Peace held in Mexico in March 1945, Argentina pledged itself not to give refuge to individuals guilty of, responsible for, or accomplices in the commission of "heinous crimes" in violation of the laws of war, treaties, international law or "the concepts of civilized life."

2. Is Eichmann indicted under an *ex post facto* law?

Objection

Eichmann is being tried in Israel under the Nazi and Nazi Collaborators (Punishment) Law, enacted in 1950. The charge has been made that since the law was passed after commission of the crimes, Eichmann is prosecuted illegally.

—This law . . . threaten[s] punishment for crimes committed before its promulgation (and thus violates a general principle of justice). . . .¹⁷

—Everything connected with the proceedings against Eichmann is tainted with lawlessness. . . . Israel can try him only under *ex post facto* statutes. To try him according to the forms of law is to make a mockery of law.¹⁸

Response

Crimes against humanity and war crimes are established offenses in international law.

—In our century the Preamble to the Fourth Hague Convention of 1907 declared that "the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience."¹⁹

—The concept of crimes against humanity was "formally recognized in contemporary international law by its insertion in the Charter of the International Military Tribunal for the Prosecution and Punishment of the Major War Criminals of the European Axis, commonly known as the Nuremberg Charter."²⁰

—The theory of non-retroactive statutes, *ex post facto* laws and all the rest, is that you have no right to make criminal something which wasn't

criminal when the man committed it. Well; when Eichmann committed his acts, they were in violation of well established doctrines of international law as they then stood. And it would be very hard, I think, to suggest that Eichmann would be surprised to learn that murdering six million people would not be thought by other people to be criminal.²¹

—Justifying the Nuremberg trials, a present critic of the Eichmann trial wrote:

The crime of murder is now defined in the penal codes of most of our states, but any lawyer knows that these definitions have their origin in a multitude of early decisions, and that murder was punished centuries before we had codes or legislatures or even learned legal texts. The early communities sensed that their survival as such depended upon the establishment of a measure of peace and order, and the punishment of those who breached the peace. Surely it is apparent that international law is today in much the same state of development as was the common law centuries ago. If we reject international law unless it is embodied in codes and statutes, with all the paraphernalia of modern national judicial systems, we shall never find it at all, for it cannot exist in this form without a correspondingly highly developed world political organization.²²

3. Is Israel a proper venue?

Objection

It has been charged that Israel has no right to try Eichmann because it did not exist legally as a sovereign state at the time he committed his crimes and they were not committed there.

— . . . there is little to be said for trying a man at a place far distant from the scene of his actions, in a land to which he has been brought by clandestine force and which was not yet a nation at the time of alleged crimes.²³

Response

—According to generally recognized doctrine . . . the right to punish war crimes is not confined to the State whose nationals have suffered or on whose territory the offence took place, but is possessed by any independent State whatsoever, just as is the right to punish the offence

¹⁷Fromm, *loc. cit.*

¹⁸"Jungle Law" (editorial), *The Washington Post*, May 27, 1960.

¹⁹Quoted in United Nations War Crimes Commission, *op. cit.*, p. 25.

²⁰*Ibid.*, p. 174.

²¹Katz, *loc. cit.*, p. 8.

²²Telford Taylor, "Nuremberg Trials: War Crimes and International Law," *International Conciliation*, April 1949, pp. 338-339.

²³Telford Taylor, "Large Questions in the Eichmann Case," *The New York Times Magazine*, January 22, 1961, p. 22.

of piracy. This doctrine, under which every independent State has in International Law jurisdiction to punish pirates and war criminals in its custody regardless of the nationality of the victims or the place where the offence was committed . . . has received the support of the United Nations War Crimes Commission and is generally accepted as sound. . . .²¹

— . . . in one of the Supreme Court decisions which grew out of the prosecution of one of the Japanese war crimes, the Supreme Court of the United States explicitly affirmed the principle that any state may punish war crimes wherever and whenever committed. As seen, war crimes may, I think, on the basis of doctrine as well as good sense and principle, be assimilated to slavery and to piracy as the kind of crime which may be punished by anyone anywhere. This then would be the state of the law as to the propriety of Israel's statute to Eichmann. . . .²²

4. Will Eichmann have a fair trial?

Objection

- Nothing since Eichmann's capture has altered the early impression that the trial is to be a genocide extravaganza rather than a dispassionate judicial proceeding.²³
- The total course of Israel's actions assumes the guilt of the accused. Is it conceivable that a

jury of Israeli citizens could now return a verdict of not guilty?²⁷

—Still another distressing feature of the Eichmann case is that he has already been pronounced guilty by the head of the Israeli Government. . . . Certainly what is now known about Eichmann shrouds him in a dark cloud of probable guilt, and in the context of our times such expressions are more than understandable; they are inevitable. Nevertheless, when statesmen and jurists discuss the appropriate forum for his trial, it is wrong to begin with a statement of his guilt.²⁸

Response

The following is from a German newspaper:

— . . . since his capture, Eichmann has been subjected to orderly proceedings and all the legal means have been made available to him for an adequate defense. In court, he will be defended by a German attorney, Dr. [Robert] Servatius, of Cologne, who will be aided by a Munich attorney and advised with regard to the peculiarities of Israeli law — which is based on Anglo-Saxon law — by the Jerusalem attorney Mendel Scharf. Eichmann will be permitted to summon witnesses and present documents to prove, if he wants to, that he only acted on orders and is innocent. He will have to be considered guilty only after the court has spoken and condemned him.²⁹

CONCLUSION

Many serious questions of law are raised by the Eichmann case. They merit earnest consideration. But beyond the disposition of the case itself lie greater questions which cannot be answered in any court. Public discussion of the proceedings must be conducted in a manner that will illuminate and not obscure those profound and far-reaching questions.

In February 1961, the Evangelical Church in Germany admonished the German people not to close their eyes and ears to the disclosures of Eichmann's trial, but to confront anew the truths about nazism, anti-Semitism and genocide which the trial will help establish.

What German Christians are asked to do is not essentially different from what Americans, Christians and Jews alike, should do.

²¹United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*. Vol. XV: *Digests of Laws and Cases* (London, 1949), p. 26.

²²Katz, *loc. cit.*, p. 8.

²³"Israel Borrows Hitler's Argument" (editorial), *Montgomery Advertiser*, January 25, 1961.

²⁴Handlin, *loc. cit.*, p. 3.

²⁵Taylor, *op. cit.*, p. 23.

²⁶*Frankfurter Allgemeine Zeitung*, February 28, 1961.

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AMERICAN JEWISH COMMITTEE

FROM: Rabbi Marc H. Tanenbaum, Director
Interreligious Affairs Department

SAMPLING OF REACTIONS TO THE AJC EICHMANN TRIAL
MEMORANDUM

ARCHBISHOP IAKOVOS,
GREEK ORTHODOX CHURCH OF NORTH AND SOUTH AMERICA:

"Thank you very much for sending me the memorandum on the Eichmann case prepared by the American Jewish Committee. We are very glad to have this most interesting and informative pamphlet."

"The Greek Archdiocese will certainly make use of this." (Arthur Dore, Director of Information)

THE NATIONAL CONFERENCE OF CHRISTIANS AND JEWS:

"The analysis of the Eichmann case provides valuable background material for our regional directors. May I ask you to send me 125 copies of this presentation so that we may make full distribution to our 65 field offices."

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"Thank you very much for your letter and the AJC brochure on the Eichmann case. Will you be kind enough to forward 40 copies - I would like to distribute them for use of the clergy, press, and study groups in this area."

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"I was very glad to receive the American Jewish Committee's brochure on the Eichmann case. I have already used it effectively in discussions and intend to use it in the pulpit and in my study classes. If you will be good enough to send me ten more copies, I have the opportunity of distributing them among people who mold public opinion here on Long Island."

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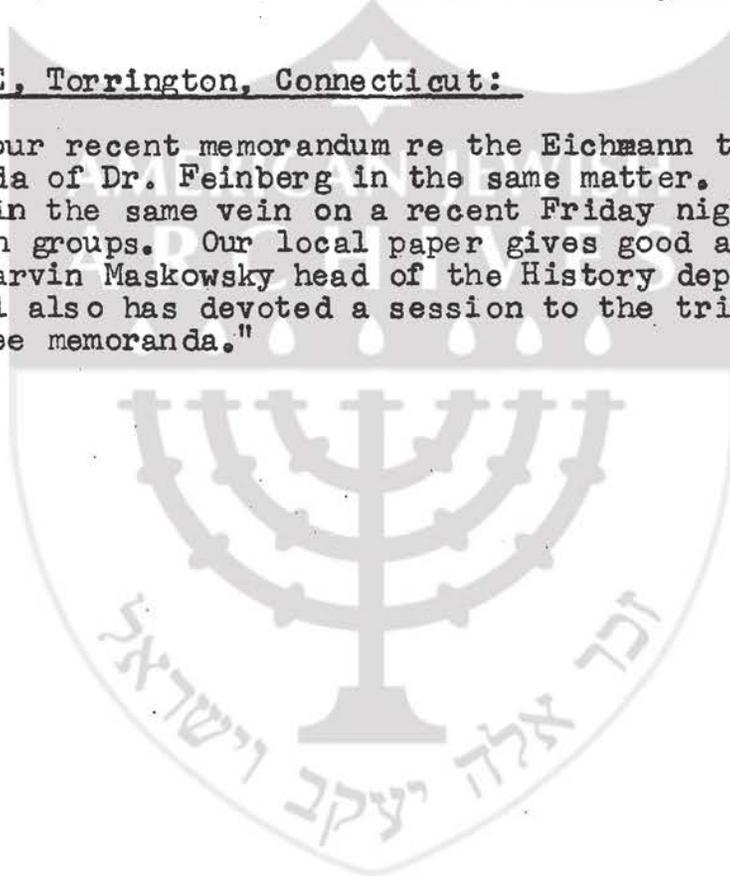
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"Thank you for the material on the Eichmann case. I shall read it with great interest." (Reverend Dr. William J. Villaume, Director of Social Welfare)

BETH EL SYNAGOGUE, Torrington, Connecticut:

"Thank you for your recent memorandum re the Eichmann trial and the previous memoranda of Dr. Feinberg in the same matter. I have spoken to my congregation in the same vein on a recent Friday night, and also before two church groups. Our local paper gives good and favorable coverage. Mr. Marvin Maskowsky head of the History department at our local high school also has devoted a session to the trial in the light of the above three memoranda."



4/27/61

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"The analysis of the Eichmann case provides valuable background material for our regional directors. May I ask you to send me 125 copies of this presentation so that we may make full distribution to our 65 field offices."

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"Thank you for including me in your mailing of presentation of the Eichmann case prepared by The American Jewish Committee. I am tremendously impressed with the way the material was organized and presented. I wonder if I could have 25 additional copies for members of the Advisory Council of our Department of Public Affairs."

THE NATIONAL SOCIETY OF THE VOLUNTEERS OF AMERICA:

"This is of genuine interest to me and will serve as a resource guide in discussing this important issue in formal talks as well as in conversation with my friends. If you have 100 additional copies, I would like to send these to key executives of our organization to be used for the same purpose." (John F. MacMahon, General)

THE PROTESTANT COUNCIL OF THE CITY OF NEWYORK:

"I have found your analysis of the Eichmann case very helpful, and I am grateful to you for sending it to me. It seems to me that the same principles that justified the trials of the Nazi war criminals, and the Japanese war criminals constitute a complete justification of the trial of Eichmann." (Department of Christian Social Relations)

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"I am interested in this material and will be glad to distribute copies through the various areas of our church. Please accept my order for 200 copies." (Commission on Christian Social Action)

(more)

COLUMBIA UNIVERSITY - Graduate School of Journalism:

"I appreciated having the paper on the Eichmann case and will read it with interest." (Prof. Richard T. Baker)

THE CRITERION - (Official Publication of the Archdiocese of Indianapolis)

"I read with interest and I am filing for future reference the American Jewish Committee's study of the Eichmann case."

THE TEMPLE (Congregation Anshe Hessed, Erie, Pa.)

"Thank you very much for your letter and the AJC brochure on the Eichmann case. Will you be kind enough to forward 40 copies - I would like to distribute them for use of the clergy, press, and study groups in this area."

CONGREGATION BETH ISRAEL:

"I can use an additional 50 copies for clergy distribution."

CONGREGATION DARCHAY NOAM: (Far Rockaway, New York)

"I was very glad to receive the American Jewish Committee's brochure on the Eichmann case. I have already used it effectively in discussions and intend to use it in the pulpit and in my study classes. If you will be good enough to send me ten more copies, I have the opportunity of distributing them among people who mold public opinion here on Long Island. "

TEMPLE EMANUEL (Greensburg, Pa.)

"If you would be good enough to send me additional copies (25) of the Eichmann case analysis, I would distribute them to our local ministers, newspaper, etc."

CONGREGATION BETH YESHURUN: (Houston, Texas)

"I appreciate your sending me the pamphlet on the Eichmann case. It is the best statement of the pros and cons, and I have used it to good advantage the first day I received it in a panel discussion with three non-Jewish lawyers."

TEMPLE EMANUEL (Grand Rapids, Michigan)

"I thought you might be interested in seeing what beautiful use we have made of your material in our Bulletin."

TEMPLE BETH AARON: (Billings, Montana)

"I am enclosing a list of local clergy from the church page and several other moulders of public opinion; and suggest that you circularize them with this as well as with future brochures of public interest. I would also appreciate about 100-150 copies which I can distribute among our own as well as to outside groups that I address frequently."

WORLD COUNCIL OF CHURCHES ON INTERNATIONAL AFFAIRS:

"Thank you very much for sending me the analysis of the moral and legal aspects of The Eichmann trial. I have been interested in perusing it and found it helpful. We shall want to keep it on file." (O. Frederick Nolde, Director)

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST:

"Thank you for the material on the Eichmann case. I shall read it with great interest." (Reverend Dr. William J. Villaume, Director of Social Welfare)

BETH EL SYNAGOGUE, Torrington, Connecticut:

"Thank you for your recent memorandum re the Eichmann trial and the previous memoranda of Dr. Feinberg in the same matter. I have spoken to my congregation in the same vein on a recent Friday night, and also before two church groups. Our local paper gives good and favorable coverage. Mr. Marvin Maskowsky head of the History department at our local high school also has devoted a session to the trial in the light of the above three memoranda."

MARCH, 1961

COMMENT ON A TRIAL

by Benjamin R. Epstein
National Director

Everything about the trial of Adolf Eichmann, now scheduled to start in Israel on April 11, is extraordinary: the crimes with which he is charged, the conditions in which they took place, the method of his apprehension, the site of the trial and the trial itself.

These extraordinary circumstances have focused world attention upon the proceedings about to take place in the Beit Ha'am, the converted courthouse in Jerusalem. They have also raised questions, criticisms, fears, defenses, charges and counter-charges quite as strange as the facts surrounding the Eichmann case.

Israel believes it has the right to try Eichmann. Some lawyers, including those friendly to Israel and its problems, question the legal precedents. American Jews worry about their involvement and position and the impact of the trial upon Jews throughout the world. Some nations, including members of the wartime allies, worry about the evidence which will be brought into the courtroom.

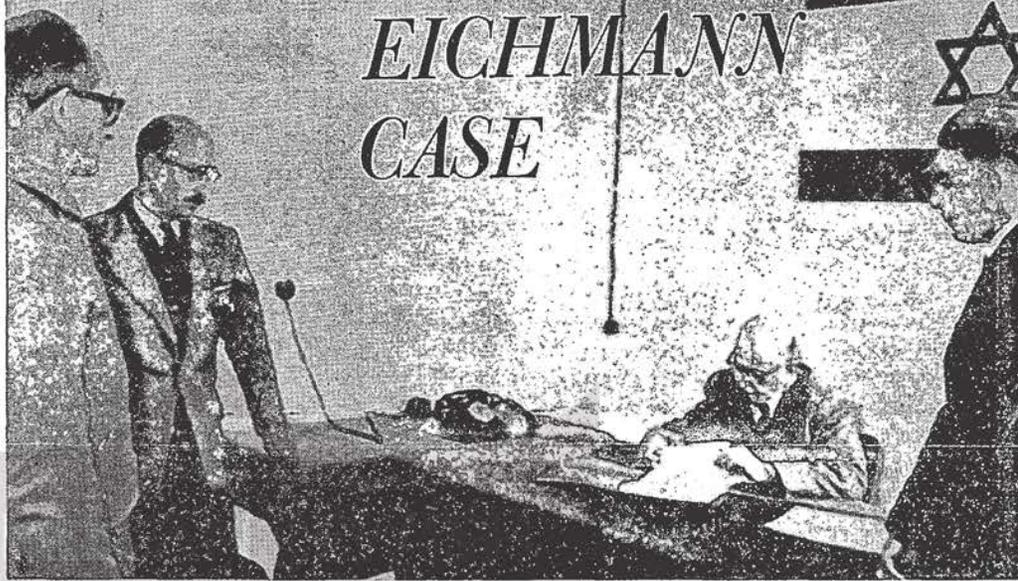
Except for segments of the hate press which maintain that the murder of six million is nothing but a hoax perpetrated by "international Jewry", no one defends Eichmann or seriously questions his guilt. Only the legalities, technicalities, and values of the trial—and sometimes the "ethics" of the case—come in for discussion. But the discussion is so heated that often basic facts are forgotten; people sometimes talk as though Israel and Jews generally—and not Adolf Eichmann—were on trial.

This is unfair and deplorable. Certainly Jews generally—except for their profound emotional interest—have little to do with the Eichmann case. It is the entity of the State of Israel, not an amorphous group of Jews, that indicted and will conduct the Eichmann trial. Israel is a member-state of the United Nations, an autonomous sovereignty, responsible only to itself for its actions within its own national boundaries. Jewish people, as such, are not involved in the legal process of the Eichmann case and have no say in the matter. Jews outside of Israel, not being responsible for Israel's actions, should not be required to find explanations or be defensive about what the government of Israel does.

Still, the reality is that American Jews do feel pressured by the Eichmann trial, often are called upon to explain or defend. For some months now, issues of the Eichmann case have been repeatedly raised in questions addressed to ADL. The ques-

Continued on page 2

THE
EICHMANN
CASE



Eichmann, left foreground, stands before a judge in Haifa.

As the world watches—and debates the issues—Israel seeks to evoke the tragic past to serve mankind's future.

by ARNOLD FORSTER

THE first wave of questions came, the instant after Prime Minister David Ben-Gurion announced in May 1960 that Adolf Eichmann had been arrested and would soon be tried in Israel for his role in the mass murder of Jews under Hitler. How had he been tracked down and where? How had he been brought to Israel? Perhaps, for many reasons, the Israeli government hoped that the answers would never be divulged. But soon the world press knew the details, or most of them. Then came the second wave of questions, the more vexing ones concerning the legality, ethics, political and historical wisdom of "the Eichmann case."

Eichmann had, in effect, been seized and taken by force from a country where he had been hiding illegally under an assumed name. Could his capture by Israeli agents under such circumstances be justified on legal or ethical grounds? Why try a man fifteen years after he had committed a crime? Why should Israel, a country founded years after the crimes were committed, have the right to try him instead of West Germany, or better still, an international tribunal? Could Eichmann possibly hope for a fair trial in a country whose people were obviously so hostile toward him? And above all,

what could the trial of Eichmann possibly accomplish, except satisfy an understandable desire for revenge? Why not let sleeping dogs lie?

The questions are serious ones; they have been answered seriously, by many sources and, principally, by representatives of the State of Israel, the major target for criticism. This is an attempt to summarize these answers.

THE PURPOSE of the trial: The government of Israel has stated that the trial's purpose is to alert the conscience of the world to the fearful consequences of totalitarianism. The most terrible consequence, Israel says, is genocide whose chief victims in modern history—although not the only ones—have been Jews. Israel also believes that the generation that has grown up since World War II does not fully understand the dangers inherent in an authoritarian society because the full horror of Hitlerism has never been brought home to them.

Eichmann is being tried for "crimes against humanity" as well as for "crimes against the Jewish people." His trial is not a case of special pleading for Jews; the tragic story of genocide committed against Jews must be read as an integral part of contemporary history. What happened to the Jews of Europe (and, to a

lesser degree, to other groups too) can very well happen to other peoples oppressed by totalitarianism.

The Eichmann trial will cause much personal anguish for many Israelis; more than 300,000 of them lost at least one immediate relative to the Nazis and the court testimony will reopen deep personal wounds. But their government has concluded that it is more important that the world be reminded of the horrors of Nazism. The hope is that the trial will serve as an effective educational weapon to assure that they will never recur.

If it is to be an effective weapon, the trial itself must be regarded as fair, legal, and just throughout the world. The government of Israel knows this and is determined that it will be carried through just that way—with legality, and justice and without a spirit of vengeance.

It is, of course, possible to anticipate the sentence to be given Eichmann if he is found guilty of genocide; death is mandatory. Many people fear that if he is actually hanged, there will be unfortunate repercussions in many countries, particularly from people who oppose capital punishment. And some who regard the Nazi era as ancient history will argue that Eichmann's execution is senseless.

While Eichmann can go to his death on the gallows, sentiment in Israel is

against capital punishment. Former Prime Minister Ben-Gurion and the Israeli government have indicated their feelings on the subject; both have made clear, too, that Israel is not interested in punishing Eichmann for punishment's sake. Ben-Gurion has also said that it is impossible to avenge the murder of six million humans simply by punishing one of the culprits; there can be no fit punishment for a person guilty of the crimes charged to Eichmann nor will his death give any satisfaction.

It should be noted, however, that until last month there was no statute in Israeli jurisprudence providing for a way to carry out a death sentence. When the criminal genocide law was enacted in 1950, the Israeli legislature failed to say how the death penalty was to be inflicted. Legislation had to be enacted specifically for the purpose; in January, the Knesset passed the so-called "Eichmann Law" providing for death by hanging.

Yet the persistent fact of Israeli life is that capital punishment, especially death by hanging, is regarded as unethical and even contrary to Talmudic law. All over Israel, religious scholars, philosophers, and prominent lawyers seem to be in full accord that the death punishment is wrong—even for Eichmann. This seems to be a universal Jewish attitude. Last month in the United States a group of foremost American rabbis expressed the idea that "the entire trend of Jewish religious thought runs increasingly against the practice of capital punishment"—a principle which should not be sacrificed for the sake of revenge. Furthermore, one rabbi said, the crime of genocide "is of such cosmic proportions that only God can mete out adequate punishment."

THERE IS MUCH discussion about the legality of Israel's actions in the Eichmann case. Three major critical comments are that: 1) Israel perpetrated an act of kidnapping, an offense to every legal and moral code everywhere; 2) On the face of it, Eichmann is to be tried under an *ex post facto* statute—a law which makes an act criminal only after the act itself was committed. This kind of law is constitutionally outlawed in American jurisprudence; and 3) The State of Israel has no right to try a man for alleged misdeeds committed before Israel was established and far outside the boundaries of Israel today.

An essential answer to each of these charges has already been offered by Israeli spokesmen and legal authorities in various countries: 1) The crime of kidnapping is denied and Israel contends that Eichmann voluntarily accompanied those who apprehended him; no evidence to the contrary has been presented. Besides, common law principle is that a court is not concerned with the manner in which a criminal is apprehended; 2) *Ex post facto* is a statutory concept in the United States but does not apply in most other countries. The concept, when it comes to mass murder, was discarded at Nuremberg—a man does not need advance notice to tell



Defense attorney Robert Servatius (left) and prosecuting attorney Gideon Hausner.

him that it is wrong to kill masses of human beings; 3) Mass murder is much worse than piracy and yet, under international law, a pirate may be seized and tried by any sovereign nation.

These issues are more fully explored in the article starting on Page 3. Undoubtedly, as the trial progresses, other points of contention will arise that may be troublesome, sometimes embarrassing, to those concerned. Eichmann will certainly testify to his alleged offer to the British to release a million Jews to the Allies in return for ten thousand trucks. He will probably contend that neither the Jewish Agency representative, through whom he negotiated, nor the Allied powers to whom he made his "humane" offer, were willing to receive the Jewish refugees. He may maintain that they were the real culprits in the death of one million Balkan Jews, that he was merely the innocent tool of the Nazi war machine.

If this is done, the prosecution will seek to prove that Eichmann's offer was transparently insincere or meant to be

COMMENT

Continued from preceding page

tions come from Jews and Christians both; Christians who somehow feel that Jews generally have a responsibility in the case, Jews who want to know what are the facts.

It is for these reasons that this special issue of the ADL Bulletin is devoted to the Eichmann case. Our effort is to get to the facts of the case: the actual indictment and charges made, the words and background for the Israeli laws that apply, the legal premises and precedents which are usually vaguely understood or never even uttered. Our effort also is to answer the questions which we believe are now disturbing Jews. Beyond this, throughout the weeks or months of the trial—ADL will also try to interpret its course in terms of American customs and legal traditions.

Perhaps the most basic material in this issue appears on page 4—the sworn statements presented at the Nuremberg War Crimes Trials. It is important to remember that these too were extraordinary trials conducted under extraordinary circumstances (although they are now commonly accepted as contributing to the growth of international law). These too showed clearly—for all the world to see—prejudice's meaning and its end results.

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divisive (the trucks were supposedly to be used in Nazi efforts to stop Russia, and not on the Western front). Nevertheless, charges made against a Jewish organization and against such men as Sir Winston Churchill, wartime prime minister of Great Britain, which took the lead in rejecting Eichmann's "bargain", may tend to tarnish the reputations of persons living and dead.

NO MATTER how strenuously Israel tries to conduct a fair trial, it will be open to criticism. Israel is paying Eichmann's German attorney, Robert Servatius, for his work as defense counsel, (and also paying to have witnesses brought to Israel). This arrangement, done in a spirit of justice, may also produce the accusation that "the trial is rigged—even the defense attorney is being paid by the prosecutor." The implication is nonsensical; Servatius is a forthright lawyer profoundly committed to presenting the best possible case in behalf of the defendant. Besides, the Eichmann family itself selected him.

An able defense can reasonably be expected to try to arouse public opinion and win sympathy for his client as was done in the Caryl Chessman case; it may seek to project a picture of Eichmann as a man with a loving wife and three children, "a hard-working man being persecuted for doing his job during the war like a good soldier."

The "good soldier" idea will certainly be advanced during the trial, and will probably represent the core of the defense. His lawyer may compare his responsibility to that of American pilots who flew the planes that dropped atom bombs on

Hiroshima and Nagasaki during World War II and killed thousands of women and children. Here, too, the prosecution will have to meet a persuasive argument and will have to point up the distinctions: the United States and Japan were in a state of war, provoked by the Japanese attack on Pearl Harbor; Hiroshima and Nagasaki were military targets in the sense that their destruction sapped Japan of industrial power and its will to continue the war; the American pilots, even if they knew the destruction inherent in their bombs, really were taking orders; their act was nothing but the very last step in a long operation planned and executed by thousands of others. But the murdered Jews, Israel will say, were hardly in a state of war against Germany; beyond that, Eichmann's orders were merely to "solve" the Jewish problem—the techniques for solving it through mass murder were, in the main, Eichmann's own conception and doing.

EVEN THE method of the trial and its physical surroundings may come in for criticism. Unlike the American way, there is no jury system under Israeli law. In place of the usual three-judge trial court, a special panel is being constituted to preside in the Eichmann case. Elaborate means have to be taken, within and without the courtroom, to safeguard Eichmann's life. More than 400 news correspondents will crowd into the courthouse and surrounding areas. There will be simultaneous translations—from Hebrew into English, French, and German—made through a miniature broadcasting system in the *Beit Ha'am*. Israel has contracted with an American television production

company to videotape the proceedings, edit them to useful size, and sell them on a non-profit basis to interested television broadcasters throughout the world. Israel has no television of its own; it made this arrangement as the only possible way to assure that all television networks and stations would have equal access to trial coverage. But there has been criticism that Israel is thus trying to censor the proceedings or muzzle television coverage.

The Eichmann case can also produce new anti-Semitic charges or renewals of old ones. His apprehension by an apparently expert team of "Jewish volunteers" has already supplied anti-Semites with new ammunition. Here, they say, is evidence of a powerful "international Jewish conspiracy" operating under the control of the Elders of Zion; national boundaries, the rights of nations and of individuals mean little to "the internationalists," they claim. The Eichmann trial should again show any reasonable person how monstrous a notion this is. Where, indeed, was the alleged power or machinery of "international Jewry" when Jews were being murdered in droves?

Despite these pitfalls, some of them grave ones, the government of Israel knows that the trial must be conducted openly and with all justice if it is to serve its constructive purpose. Israel is determined that this purpose shall be served. The sworn testimony of a legion of credible witnesses, the irrefutable quality of the documentary evidence, the still-living proof of Nazi misdeeds—all these should keep the world from forgetting the incredible, ever-present dangers of totalitarianism. This is the single most important reason for holding the trial.

SEVEN KEY LEGAL POINTS

by SOL RABKIN

IT WAS a time of madness. Standards of morality, law, and civilization were reversed. The gangsters and hoodlums were in control and it was state policy to massacre and plunder. Wrong was right, the innocent were guilty, their murderers ceremoniously decorated.

The crimes of the Nazis transcend the ordinary limits of criminal codes. This was understood at Nuremberg where the judges had to enlarge or revise their conceptual thinking to cope with the cases before them. It was not easy and not all agreed; there were few precedents in law for Nuremberg. It is easy to understand why some aspects of the Nuremberg trials were criticized by lawyers and laymen who believed that abstract or con-

ventional principles of law were being violated.

There has been this type of objection to the Eichmann case too. It comes, particularly, from people who are unable to grasp the magnitude and unprecedented nature of the crimes charged. Beyond that, critical debate about Eichmann in the United States often takes place within the framework of a system and mode of legal thought that does not necessarily apply to the Eichmann case which, after all, is being tried under Israeli, not American, practices of jurisprudence. There has also been a confusion of the legal and moral issues involved.

American critics have been answered by Israeli spokesmen who, quite naturally,

explain Israel's course of action—in matters of law—within the framework of their own legal system and—in matters of morals—in accordance with their own outlook and beliefs.

These are seven key legal questions which have drawn critical comment from some American quarters. The responses come from Israeli sources and from Americans who have considered and accepted the Israeli view:

I. "Wasn't Eichmann Kidnapped?"

The spiriting of Eichmann out of Argentina has been the most widely debated issue in the world press, in diplomatic circles, and at the United Nations. Israel has been charged with an act of

kidnapping that is an offense to every legal and moral code. Not so, says Israel. This was no kidnapping. Eichmann was tracked down by volunteers—people who had dedicated themselves to bring him to justice—and, tired of continuing to live as a fugitive, he had consented to accompany them to Israel. Though many view this answer with skepticism, neither Eichmann nor his attorney, Robert Serfatius, have thus far denied it. Nor has anyone else come forward with evidence that would refute the Israeli government's statement.

The prosecution will not be impeded by the question of kidnapping should it arise at the trial itself. It has already been indicated that Israel will take the position that many nations have taken similar action in apprehending criminals. American courts, for instance, have applied the common law principle that they can not be concerned with the manner in which a defendant is apprehended:

"The power of a court to try a person for a crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.' . . . Due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him, and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." (*Frisbie v. Collins*, 342 U.S. 518 [1952]).

A noted historian has carried the discussion a step further by charging that the Israelis violated "the historic right of the refugee" in taking Eichmann from Argentina, and that Jews, of all people, should have respected that right. In raising this issue, however, the historian inadvertently raised the question whether Eichmann was indeed a refugee who had been granted asylum by Argentina. Or was he, in fact, a fugitive from justice who had entered the country illegally—without the knowledge of its authorities—and lived in it under an assumed name in order to escape punishment of his crimes.

2. "Why Wasn't Eichmann Legally Extradited?"

Here it is argued that Israel, once having located Eichmann, should have petitioned Argentina for his extradition since both Israel and Argentina are members of the United Nations and the General Assembly of the U.N. has, on occasion, appealed to member nations to extradite and surrender war criminals.

Again the legal issues and the moral issues run into each other, for Argentina has long been a haven for Nazi war criminals and has thus far never honored an extradition request. The West German government sought the extradition of

such war criminals as Karl Klinghofer and Dr. Josef Mengele, but had its requests rejected. The Israeli government has made the point that, in view of Argentina's past position, it had no basis for believing that an extradition request would be honored, especially since there is no extradition treaty between the two countries.

Beyond that, lawyers have pointed to the writing of Hugo Grotius, the founder of modern international law, as a commentary on Argentina's position. Grotius rejected a nation's right to furnish asylum to criminals. He declared that a community or its rulers may be held responsible for harboring those who have done wrong elsewhere; the responsibility consists in either punishing or surrendering the guilty party, especially when such crimes affect human society at large. Argentina has shown no willingness to accept such a responsibility.

3. "Isn't Israel trying Eichmann under *ex post facto* law?"

An *ex post facto* statute is a law which makes an act criminal after the act itself had been committed; it is constitutionally outlawed in American jurisprudence. The *ex post facto* legal concept is an American one, based on the idea that it is unfair to compel a man to stand trial for a deed which he could not have known was a violation of the law when he committed it. Obviously, this concept does not apply to murder; no one needs formal notice that it is morally, legally, and ethically wrong to kill another person without justification.

Ex post facto is not a principle of international penal law, but of some nations' laws. Eichmann is being tried under a law that is based upon international penal law, as enunciated in the Nuremberg trials and in the genocide convention.

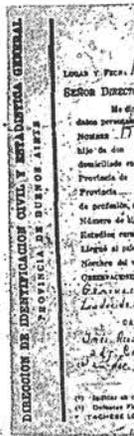
4. "By what right does Israel claim jurisdiction?"

Some legal experts question Israel's jurisdiction and its right to try Eichmann. They say Eichmann's crimes were committed in Europe and should be tried there; none of the crimes alleged against him was committed in Israel, which was not in existence as a state at the time. They point to the territoriality principle which requires that a defendant should be tried where he committed the crime alleged.

Those who differ with this say that the territoriality principle is not an absolute, even in the United States and the United Kingdom where it originated. Thus, Douglas Chandler, an American who broadcast throughout the war for Nazi Germany, was tried and condemned for treason in the United States although his crimes were committed in



Eichmann, June 1960



His Argentine

Germany. The territoriality principle is not universally accepted. Under German law, all crimes committed by German nationals, whether at home or abroad, are subject to German courts. Nor is there provision in international law establishing rules of criminal jurisdiction, or offering solutions in cases of conflict of such jurisdiction. Even if West Germany wanted to try Eichmann as a German national (which it does not), it would have no more right to do so under international law than Israel; and there would be no way of deciding which country had the best jurisdiction.

Another principle has been suggested as being more applicable than the territoriality one. In cases of international crimes, any member of the international community can try a person charged with crimes against international law if that person is in its custody. Under this principle, Israel has the right to try Eichmann.

From Nuremberg:

THE SWORN

As in the Eichmann case, the International Military Tribunal at Nuremberg was not meant merely to convict and punish those guilty of crimes. Instead, in the words of Robert G. Storey, past president of the American Bar Association and executive trial counsel at Nuremberg, "of far greater importance . . . was the making of a record of the Hitler regime which would withstand the test of history." The Tribunal was composed of representatives from the United States, Great Britain, France, and the U.S.S.R. and conducted trials of major war criminals from November 1945 to October 1946. After about 200 witnesses had spoken and more than 5 million words of testimony presented, twenty-one major German war leaders



Chilean identity card made out to "Ricardo Klement."

just as the United States—were Eichmann here—could try him.

5. "Shouldn't Eichmann be tried by an international tribunal?"

Many who ask this suggest that Israel should content itself with being prosecutor, rather than judge in the case; that instead of trying Eichmann, Israel should conduct proceedings along the lines of an inquest which precedes and furnishes the basis for an accusation in European criminal practice. Once the charges were drawn up and supported by such an inquest, Israel could lay them before the United Nations; and the UN could then create a special tribunal to judge Eichmann, under the Nuremberg principles affirmed by the UN General Assembly in 1946.

There is little likelihood, however, that the United Nations, in order to try Eichmann, would recreate another *ad hoc*

international court, similar to Nuremberg or Tokyo. The UN General Assembly twice rejected proposals to consider the establishment of a permanent international criminal court. The plain fact is that there is no such court today and it is unrealistic to suggest one can be created to try Eichmann.

The existing World Court at The Hague cannot of course handle the Eichmann case; it is an international court of civil, not criminal, jurisdiction.

6. "Will the trial be fair?"

Hasn't Eichmann been prejudged and found guilty? Those who ask the question hold that Eichmann has in effect been condemned by the head of the Israeli government, and by countless magazine articles and books, television and radio programs, and plays and so forth. Mr. Ben-Gurion has not hesitated to refer to Eichmann as "the man who killed six million Jews," and to Eichmann's "victims" as having been "murdered."

Israel answers matter-of-factly that neither Ben-Gurion nor world public opinion is going to pronounce legal judgment in the Eichmann case. Israel is a democratic state and its judiciary, as in the United States, is an independent branch of the government and not subservient either to the executive or legislative arms of the state. Eichmann's guilt or innocence will be determined by an Israeli court solely on the basis of evidence before it.

7. "Are the charges proper?"

There is a segment of opinion that believes Eichmann should be charged with genocide and not with crimes against the Jewish people. The essence of law, these

critics argue, is that a crime is committed not only against the presumed victim, but against the community as a whole. By charging Eichmann with having committed crimes against Jews alone, the Israeli Government is making the dangerous implication that what he did was not a crime against non-Jews or against society in general. The Nuremberg Trials, it is stressed, were based on a different proposition: that atrocities, whether committed against Jews or non-Jews, were equally crimes against international law. The Israeli indictment is therefore out of keeping with the trend of modern law by defining a crime in terms of the religion or nationality of the victim, rather than in the terms of the nature of the criminal act.

The Israelis point out, however, that the charges against Eichmann list fifteen counts; four are for crimes against the Jewish people, seven are for crimes against humanity, one is for a war crime, and three are for belonging to Nazi organizations. Thus, Eichmann is being tried for his crimes against non-Jews as well as Jews. Further, Israelis argue that to specify the group alleged to be the victim of the genocide is not to minimize the crime or to deny that other races, religions or nationalities were equally its victims; all acts of genocide remain crimes against humanity.

Finally, Israel has maintained that the trial of Eichmann will both strengthen the principle that genocide is a crime, and underscore the need for machinery to enforce the convention; that, therefore, the Eichmann trial is certainly in keeping with the needs and trends of modern international law.

TESTIMONY AGAINST EICHMANN

and seven organizations were called to account for their crimes against the world. Sentences ranged from acquittal (for Hjalmar Schacht, Franz Von Papen, and Hans Fritzsche) to death by hanging (for Joachim von Ribbentrop, Alfred Rosenberg, and Julius Streicher, among others).

Among its three major conclusions, the court ruled that the fact that a defendant had acted pursuant to order of his government did not free him from responsibility and that the true test was not the existence of the order but whether moral choice was, in fact, possible.

The whereabouts of Adolf Eichmann was unknown to allied authorities at the time of the Nuremberg trial. However, his name cropped up repeatedly in testi-

mony. Here, from the official records of the International Military Tribunal, are examples of the statements and sworn testimony about Eichmann's role and his responsibility for crimes against humanity.

¶ From JUSTICE ROBERT H. JACKSON, chief counsel for the United States at Nuremberg (in his closing argument): "Adolf Eichmann is the sinister figure who had charge of the extermination program." (Vol. XIX, p. 405)

¶ From the JUDGMENT OF THE TRIBUNAL, September 30, 1946: "In the summer of 1941 . . . plans were made for the 'final solution' of the Jewish question in all of Europe . . . the extermination of the Jews, which early in 1939 Hitler had threatened would be one of the consequences of an outbreak of war, and a special section in the Gestapo under Adolf Eichmann, as head of Section B 4 of the Ges-

tapo, was formed to carry out the policy." (Vol. XXII, p. 493)

¶ From the Affidavit of S.S. MAJOR WILHELM HOETTL, November 26, 1945: "... At the end of August 1944 I had a conversation with S.S. Lt. Col. Adolf Eichmann whom I had known since 1938. The conversation took place in my apartment in Budapest. To my knowledge Eichmann was at that time chief of a department in B 4 (Gestapo) of the Reich Security Main office and, in addition, commissioned by Himmler to collect the Jews in all countries and transport them to Germany. He expressed his conviction that the war was now already lost by Germany and, as far as he was concerned, he had no further chance. He knew that the United Nations would consider him a principal war criminal because he had millions of Jewish lives upon his conscience. I asked him how many there were and he replied that the figure was a national secret but that he would reveal it to me since, as an historian, I would be interested and he

in all likelihood would not return from his mission to Rumania. He said that a short time earlier he had prepared a report for Himmler who wanted to know the exact number of Jews killed. (Eichmann) had to come to the following conclusion: Some four million Jews had been killed in the various extermination camps, and an additional two million died in different ways, the majority of them being slaughtered by the Special Details (*Einsatz Kommandos*) of the Security Police during the campaign against Russia.

"Himmler had not been satisfied with that report. In his opinion the number of Jews killed was larger than six million. Himmler declared that he would send a man from his statistical office to Eichmann in order to prepare a new report on the basis of Eichmann's material to determine the exact number.

"I assume that Eichmann's information was correct since he, of all people, probably had the best overview of the number of murdered Jews. First, he 'delivered' Jews—through his special Kommandos—to the extermination institutions and, therefore, knew the exact figure. Second, as department chief of Bureau IV of the Reich Security main office where he was in charge of 'Jewish affairs,' he best knew the number of Jews who died in other ways. At the time we spoke, Eichmann was in such a state that he had no intention of telling me anything but the truth.

"I recall the details of this conversation exactly because it understandingly disturbed me. I had made detailed statements about it, even before the defeat of Germany, to an American agency in a neutral country with which I had been in touch at that time.

"I swear that I have made the foregoing statements voluntarily and without coercion and that to the best of my knowledge and conscience they are true..." (Vol. XXXI, pp. 85-87)

¶ From the testimony of HAUPSTURMFUEHRER DIETER WISLICENY, in response to questions put by Lt. Col. Smith W. Brookhardt Jr., of the prosecution counsel (U.S.), January 3, 1946. (Wisliceny, a former journalist, had been a close associate of Adolf Eichmann since 1934).

"...Eichmann had special powers from Gruppenfuhrer Muller, the Chief of Amt IV, and from the Chief of the Security Police. He was responsible for the so-called solution of



the Jewish question in Germany and in all countries occupied by Germany... (Eichmann) took a small volume of documents from his safe, turned over the pages, and showed me a letter from Himmler to the Chief of the Security Police and the SD. The gist of the letter follows:

"The Fuehrer had ordered the final solution of the Jewish question; the Chief of the Security Police and the SD and the Inspector of Concentration Camps were entrusted with carrying out this so-called final solution. All Jewish men and women who were able to work were to be temporarily exempted from the so-called final solution and used for work in the concentration camps. This letter was signed by Himmler himself...

"Eichmann went on to explain what was meant by this. He said that the planned biological annihilation of the Jewish race in the Eastern Territories was disguised by the concept and wording 'final solution.' In later discussions on this subject the same words 'final solution' appeared over and over again... As far as I could gather from my conversations with (Eichmann), this annihilation took place in the gas chambers and the bodies were subsequently destroyed in the crematories...

"Eichmann told me that with the RSHA he personally was entrusted with the execution of this order. For this purpose he had received every authority from the Chief of the Security

Police; he himself was personally responsible for the execution of this order...

"It was perfectly clear to me that this order spelled death to millions of people. I said to Eichmann, 'God grant that our enemies never have the opportunity of doing the same to the German people.' Eichmann told me not to be sentimental; it was an order of the Fuehrer's and would have to be carried out..."

LT. COL. BROOKHART: "In connection with the Jews about whom you have personal knowledge, how many were subjected to the final solution, that is, to being killed?..."

WISLICENY: "The exact number is extremely hard for me to determine. I have only one basis for a possible estimate, a conversation between Eichmann and Hoess in Vienna, in which he said that only a very few of those sent from Greece to Auschwitz had been fit for work. Of the Slovakian and Hungarian Jews about 20 to 30 percent had been able to work..."

LT. COL. BROOKHART: "In your meetings with the other specialists on the Jewish problem and Eichmann did you gain any knowledge or information as to the total number of Jews killed under this program?..."

WISLICENY: "Eichmann personally always talked about at least 4 million Jews. Sometimes he even mentioned 5 million. According to my own estimate I should say that at least 4 million must have been destined for the so-called final solution. How many of those actually survived, I cannot say..."

LT. COL. BROOKHART: "When did you last see Eichmann?"

WISLICENY: "I last saw Eichmann towards the end of February 1945 in Berlin. At that time he said that if the war were lost he would commit suicide..."

LT. COL. BROOKHART: "Did he say anything at that time as to the number of Jews that had been killed?"

WISLICENY: "Yes, he expressed this in a particularly cynical manner. He said he would leap laughing into the grave because the feeling that he had five million people on his conscience would be for him a source of extraordinary satisfaction..." (Vol. IV, p. 335, ff.)

Compiled by Jack Baker

From Israel:

THE CHARGES AGAINST EICHMANN

EARLY in February, Eichmann's lawyer received the Notice of Charge against his client from the Attorney-General of Israel. Later in the month, a formal indictment against Eichmann was also submitted. It went into greater detail, outlined the evidence to be presented, and appended the names of the 39 witnesses which the prosecution intends to call. There are two categories of witnesses; those who met Eichmann or suffered personally at his hands, and those who have knowledge of the overall scope of his activities.

Of the fifteen counts against Adolf Eichmann, four are for "crimes against the Jewish people," seven for "crimes

against humanity," one for "war crimes," and three for membership in a "hostile organization."

"Crimes Against the Jewish People" are covered in Section 1 (a) 1 of Israel's Nazi and Nazi Collaborators (Punishment) Law—5710 - 1950:

"A person who has committed one of the following offenses, done during the period of the Nazi regime, in an enemy country, ... constituting a crime against the Jewish people, is liable to the death penalty."

The four counts are that Eichmann: —Caused the killing of millions of Jews.

—Placed millions of Jews in living conditions calculated to bring about their physical destruction.

—Caused serious physical and mental harm to millions of Jews.

—Devised measures for sterilizing Jews.

"Crimes Against Humanity" are covered by Section 1 (a) 2 of the law:

"A person who has committed one of the following offenses, done during the period of the Nazi regime, in an enemy country, an act constituting a crime against humanity, is liable to the death penalty."

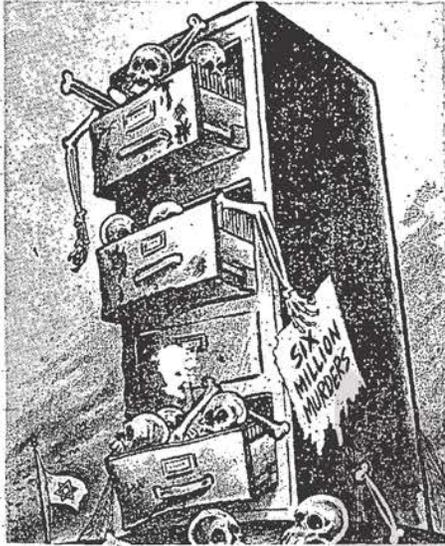
Under this section, Eichmann is charged with having:

—Caused the murder, destruction, enslavement, and deportation of the civilian Jewish population on national, racial, religious or political grounds.

—Caused the plundering of the property of Jews living in these countries

by inhuman measures involving robbery, coercion, terrorism and torture.

—Caused the deportation of more than 500,000 Polish civilians from their homes with intent to settle German families in their place.



The Eichmann File

—St. Paul Dispatch

—Caused the deportation of over 14,000 Slovaks for the same purpose.

—Caused the deportation of tens of thousands of Gypsies and their transportation to extermination camps.

—Caused the deportation of approximately 100 children of the village of Lidice in Czechoslovakia, their transportation to Poland, and their murder there.

“War crimes” are covered by Section 1 (a) 3 of the law:

“A person who has committed one of the following offenses, done during the period of World War II in an enemy country, an act constituting a war crime, is liable to the death penalty.”

Here Eichmann is charged with only one count:

—Causing the ill-treatment, deportation, and murder of Jewish inhabitants of the states occupied by Germany and the other Axis states.

Eichmann is also charged with three counts of membership in a hostile organization, covered by Section 3 (a) of the Nazi and Nazi Collaborators Law:

“A person who, during the period of the Nazi regime was a member of, or held any post, or exercised any function in an enemy organization is liable to imprisonment for a term not exceeding seven years.”

The three organizations to which Eichmann belonged were the S.S., the S.D., and the Gestapo; all were declared illegal criminal organizations at the Nuremberg Tribunal.

The indictment offers evidence that Eichmann issued original directives to local Gestapo commanders calling for the destruction of Jews. (In his *Life* maga-

zine memoirs, Eichmann assumed responsibility for nothing more than their deportation.) It also asserts that Eichmann directed those in charge of Auschwitz to use gas Zyklon-B to destroy inmates.

It also accuses Eichmann of having ordered Jewish families to be kept apart to prevent children from being born. He is also charged with having developed measures for sterilization of Jews; under regulations he is said to have established, all partners in mixed marriages after 1942 had to undergo sterility treatment “for the purpose of destroying the Jewish people.”

Eichmann is also charged with directly ordering the massive looting of Jewish property worth untold millions of dollars; in Poland alone in 1942-3, the nominal value of stolen Jewish properties was more than 200 million marks. It is charged that, under Eichmann’s orders, the personal property of extermination

camp victims—gold from their teeth, artificial limbs, hair, etc.—was regularly brought back to Germany from all across Europe by freight trains.

According to the charge, Eichmann carried out his destruction at six Nazi death camps: Auschwitz, Chemno, Belzec, Solibor, Treblinka and Maidanek. The indictment also reports that hundreds of thousands of Jews were compelled to finance their own deportation to death camps.

The indictment, a lengthy legal document, presents its facts in straightforward, dry fashion. Despite this, the demonic character of the Nazi mind comes through clearly—as in the statement that some of the groups operating with Eichmann did much of their work on the Jewish Sabbath and Jewish festivals, and selected such days for the slaughter of Jews in German-occupied Poland.

From the Nation’s Press:

APPROVAL AND DISSENT

Since Eichmann was found ten months ago, American newspapers have editorially examined every aspect of his arrest and trial in Israel. Some have confined their comments to the drama of the situation; some have bitterly criticized Israel’s actions, some supported them, and others—like the Pasadena Star-News—have had a change of heart as more facts came to light. This round-up of editorial reaction offers virtually all shades of opinion expressed throughout the nation.

Adequate Reparation

“What is ‘adequate reparation’ for the unspeakable crimes of which Adolf Eichmann stands accused? The only answer once justice is done in this case is a rededication to the principles of freedom and of the sanctity of human life: the two cannot be separated. Let this lesson be learned on both sides of the Iron Curtain.” —NEW YORK TIMES

Israel’s Tragedy

“Eichmann is the ugliest living symbol of Nazi brutality, of Nazi disregard for the concept of justice, of Nazi contempt for civilized values. What a tragedy it would be if he should become an instrument for the debasement of Israeli standards of humanity and justice. What happens to Eichmann is of relatively little importance. What happens to Israel, a symbol of the world’s best hopes, is of immense importance . . .”

—WASHINGTON POST & TIMES HERALD

Eichmann and the Duty of Man

“... Anyone’s willful blindness to injustice anywhere (makes) him a conspirator with evil. The most terrible line in Eichmann’s story (as published in *Life*) is his summary of the failure of his cold-blooded bargain with Kastner—one million Jews for 10,000 trucks. Says he: ‘The plain fact was there was no place on earth that would have been ready to

accept the Jews, not even this one million.’ It is, God help us all, a true statement. It was true of the United States of America. That all men are responsible for each other’s crimes is a theological proposition. Its political corollary is less sweeping but nonetheless true: every citizen is responsible for all the injustice in his own community. . . . Let no citizen of any community use Eichmann as a scapegoat for his own sins of neglect or unconcern.” —LIFE

Israel and the Law

“... If the judges of Israel . . . refuse to proceed with Eichmann’s case, they will vindicate a principle which Judge Cuthbert Pound of the New York Court of Appeals articulated forty years ago: ‘Although the defendant may be the worst of men . . . the rights of the best of men are secure only as the rights of the vilest and most abhorrent are protected.’ Nor would Judge Pound have claimed any novelty for his principle. It goes back tens of centuries, deep into the law and history upon which Israel is built.” —THE NEW REPUBLIC

Eichmann’s Trial by Israel Is Better Than No Trial

“There is something repugnant about watching any individual—even so bloody a villain as Eichmann—tried by his own victims after they have apprehended him illegally.

“Nevertheless, the matter appears to be settled. Perfectly understandable popular and political feelings in Israel have prevailed, and Eichmann will be tried by the Jews. That at least will be better than no trial at all. Though we would prefer justice at the hands of the international community or of his own country, we would far rather see the Nazi mass-murderer tried by Israel than escape scot-free.”

—PROVIDENCE (R.I.) JOURNAL

The Eichmann Case

“The nations of the world obviously cannot accept any claim to a transcendent right held by Israel to ignore international law and order in fulfillment of the demands of an Israel-defined ‘higher’ justice. Moreover, the assump-

tion by Premier Ben-Gurion and his government of the right to speak and act in this case for all Jews 'as the only sovereign authority in Jewry' only intensifies the confusions and contradictions already taken in the nature of the Israeli state . . . We are afraid that on every count—in the interests of international order, the future relations of Israel with other sovereign states, the exposure and prevention of the evil of anti-Semitism—the course which Israel is taking threatens to do much more harm than good." —THE COMMONWEAL

World Trial for a Killer

"The whole argument over the case of Adolf Eichmann, who is to be tried in Israel by those who escaped him, could be settled by handing the monster over to a world court of justice. If he faces an Israel court, there will always be the nagging question of the fairness of the trial. But let's suppose he were tried by a court composed of all those who suffered from Hitler? That would comprise the whole western world. Or, more logically, by a court set up by the UN? The verdict could not possibly be other than guilty; nevertheless, the principle of dispassionate justice would be vindicated." —NEWSDAY (Long Island, N.Y.)

And So To Trial

"... If a suitable tribunal were available the Nazi who directed slaughter of Jews in wartime Germany would have an international trial. But the World Court has jurisdiction between nations rather than over individuals. And neither West Germany nor Poland has shown a desire to take the case out of Israel's hands. It is reasonable to expect that the judicial system of Israel, notwithstanding the deep emotional content of the matter, will act with careful regard for the requirements of evidence and protection of rights of the accused. For the world at large, the trial may bring home a fact that many still have not assimilated . . . the Jews suffered a proportionately heavier casualty list than any of the nations principally engaged in World War II. As the tale of Nazi madness unfolds, the universal prayer should be 'Guard all of us from ever falling prey to this or another hysteria of hate.'" —CHRISTIAN SCIENCE MONITOR

'Catch and Kill'

"... Eichmann deserves to die a thousand deaths—a million. So hang him, shoot him, or throw him in the sea to avenge your murdered kinsmen. But don't expect the world to believe it is witnessing a trial when the offenses were committed before the 'laws' were passed, before the state was born." —MONTGOMERY (Ala.) ADVERTISER

The Moral Issue is Simple: Eichmann Must be Tried

"The legal problems involved in the case of Adolf Eichmann are intricate but there isn't any moral problem. Anyone with normal human instincts can answer, instantly and correctly, the question whether he should be tried for the ghastly crimes of which he is accused . . . To let him escape trial on any sort of technicality would be a failure of justice that would disgrace the human race." —CHICAGO AMERICAN

The Judges Judged

"... Hitler murdered in the name of a higher 'justice or history' that was to usher in an Aryan paradise. Ben-Gurion has a far higher concept of history, but even he cannot take to himself the task of Divine Providence, dispensing a divine judgment from a human tribunal . . . One does not simply 'clean up the world' by disposing of anyone who offends one's moral sense, no matter how drastically . . . Ben-Gurion, whose people gave to the West the Law of God, which has for centuries en-



It Calls for a Solomon

—L. I. Newsday

lightened us, should not go down in history known as one careless about the laws of man. Or history may judge the judges."

—RICHMOND (Va.) NEWS LEADER

His Own Petard

"... As far as Eichmann is concerned, it is retributive justice that his merited fate may overtake him through what is technically injustice . . . You have to feel mighty strong on the principle of law to feel sorry for Eichmann." —DALLAS NEWS

Reconsidered Opinions On Eichmann Seizure

"It is not often that we get an opportunity to confess that we are fallible . . . Our view as expressed in these columns about a month ago was that regardless of Eichmann's crimes, Israel was guilty of illegality in seizing him by the methods it used and further that Israel's jurisdiction was dubious. Bit by bit, however, more data bearing on this strange case has unfolded, and as we have studied it we have concluded that Israel's case is at least as good as that of her critics . . ." —PASADENA (Cal.) STAR-NEWS

Tragic Parallel

"The time approaches when the world's attention will be focussed on the crime of genocide as Adolf Eichmann is brought to this world's judgment for his part in the extermination of Jews in Nazi concentration camps . . . Today in the bleak Himalayan nation of Tibet another innocent people are being systematically destroyed (by) Red China's brutal rape . . . If the approaching trial of the Nazi Eichmann now reminds the Communist invaders of Tibet that the world will demand a reckoning for such crimes against humanity, it will have served one of its chief purposes." —NEWARK (N.J.) NEWS

Arrogant to the End

"One can only conclude that Herr Eichmann's mind is somewhat off the track, and such an individual is unfit for human society. We assume Israeli authorities will see to it, beyond all doubts, that Eichmann is not allowed to endanger anyone else with his strange mentality and conscience."

—PEABODY (Mass.) TIMES

From Germany Today:

"We Must Explore The Depths"

Die Welt, published in Hamburg, is one of West Germany's few newspapers circulated nationally. In this editorial, it attempts to point up the meaning of the Eichmann case to Germans today:

"... None of us needs to identify himself with this murderer. But how many of us can honestly say that they had no proclivity whatever for the ideology of 'race conscious' madness, or that they had sufficient moral fibre and political instinct to comprehend the full extent of its fiendishness? For us, the value of this trial is not only that justice will catch up with the man charged with the final solution of the Jewish problem. It is a trial that calls for us to leaf through our old diaries . . . We cannot find release from past events by pushing them aside . . . We believe that this trial can promote catharsis. There is little to be achieved by talking. Listening will be a great deal more important, even if doing so forces us to explore the very depth of our hearts. If we are prepared to do this, instead of—like Lot's wife—rigidly staring at what is behind us, then we shall really be on the road that leads out of the past into the future . . ."

The *Frankfurter Allgemeine Zeitung* said that "Eichmann's name makes us newly conscious of the fact that the German nation may not feel free of the responsibility for the atrocities committed in its name. It is not for us to question the Israelis as to the where and how of arrest . . . It is of no importance where Eichmann is brought to justice. His crime was without parallel and there have been great shifts in juridical competence in the spheres with which that crime is connected . . ."

"Eichmann's Own Story," which first appeared in *Life* magazine in December, was used in the German picture magazine *Revue* in February under the title, "The Confessions of Adolf Eichmann." Unlike *Life*, however, *Revue* made sure that few of Eichmann's remarks went unchallenged. A note at the beginning of the first of *Revue's* three articles said, "With the support of the (German) Institute for Contemporary History, we have refuted Eichmann's statements wherever they are particularly misleading." Throughout the body of the article, in small boxes, authoritative statements dispute Eichmann's "facts."

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