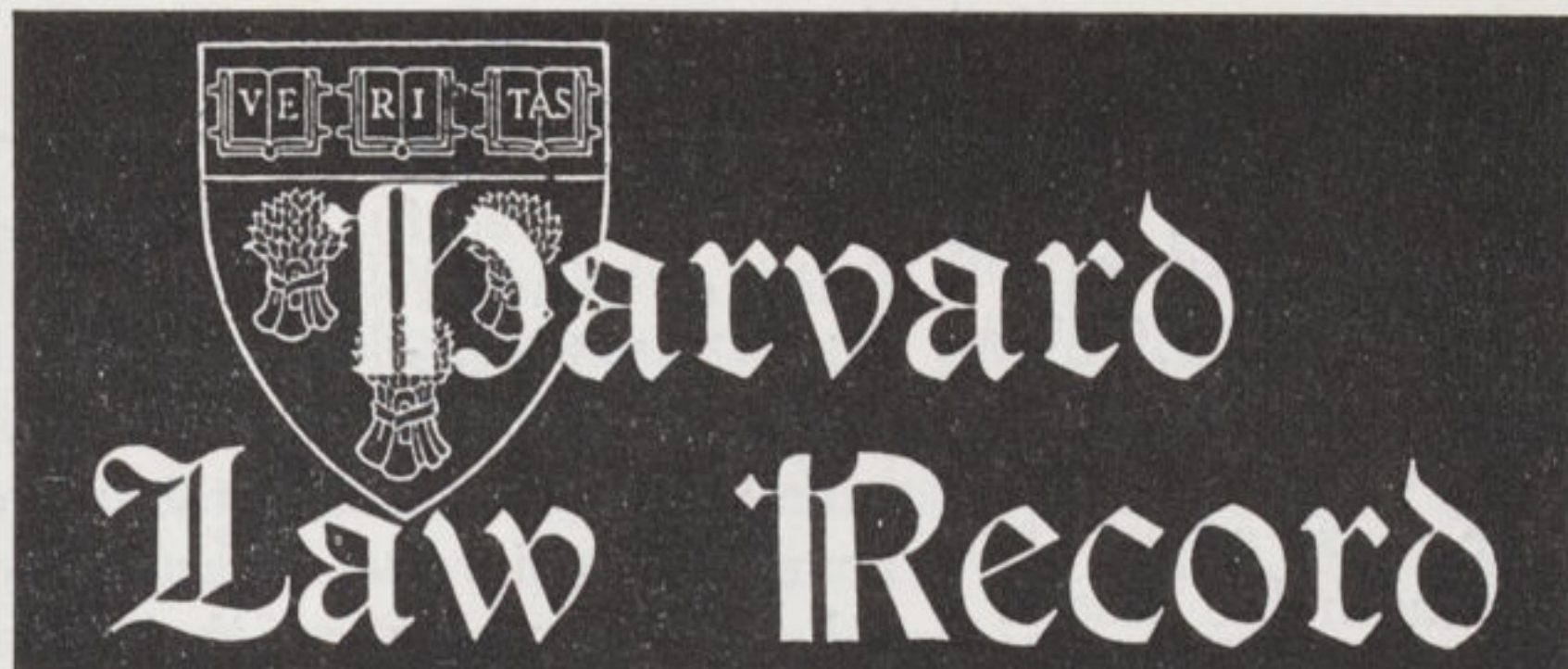




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NO. 2

Surrey Goes to Washington

By Clark P. Giles

Professor Stanley S. Surrey has been appointed Assistant Secretary of the Treasury in charge of tax policy. Mr. Surrey was the Jeremiah Smith, Jr. Professor of Law at Harvard and the Chief Reporter for the American Law Institute's Tax Program.

While at the Law School, Mr. Surrey taught second-year Federal Taxation, Business Plan-

ning, Taxation and Public Finance Respecting International Trade and Investment and a seminar on Taxation: Current Issues and Problems. Mr. Surrey is known for a policy against "loopholes" available to persons in high income brackets and special groups and in favor of taxation incentives to stimulate business investment.

Ernest J. Sargeant, Esq., of Ropes, Gray, Best, Coolidge and Rugg of Boston, will teach Mr. Surrey's second-year Federal Taxation course. Mr. Sargeant received his A.B. degree from Harvard College in 1940. He is a member of the class of 1943 of the Law School and received his LL.B. degree *magna cum laude* in 1947.

Professors in Washington

Mr. Surrey will join two former Law School colleagues in Washington who also resigned to accept positions in the new administration. Former Professor Abram J. Chayes was appointed Legal Adviser to the State Department. Mr. Chayes was appointed to the Law School faculty in 1955. This year he was scheduled to teach Civil Procedure, Corporations I, Business Planning and a seminar on The International Corporation.

Former Professor Archibald Cox is the Solicitor General of the United States. Mr. Cox was the Royall Professor of Law at Harvard and taught courses in Agency and Labor Law.

Former Dean James M. Landis is serving on the White House staff as an adviser to the President on matters concerning the regulatory agencies. Mr. Landis resigned from the Law School faculty in 1946.

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ABA President Speaks To Student Bar

By James R. McCall

Whitney North Seymour, president of the American Bar Association, addressed several hundred members of the Student Bar Association last Friday on the general topics of the organized bar and the legal profession. Following the address in the James Barr Ames Courtroom, Mr. Seymour was honored at a reception in Harkness Commons, where he answered informal questions concerning the A. B. A.

In introducing Mr. Seymour, Dean Griswold compared the functions of the various bar associations in this country to the position which the inns of court hold in the legal profession in England. The Dean assured Mr. Seymour that both his LL.B. from Columbia and his former teaching duties at Yale Law School would not weigh against him in the eyes of Harvard students.

In his address, Mr. Seymour stressed the fact that lawyers have a responsibility, not

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Hearsay

The Gropius-designed buildings that house about a third of the law students are not the loveliest places in which to reside. For that third, however, they serve as home. But since much of our time is spent bent over the desk studying, the dormitories are both convenient and functional. With that fact in mind, we must admit that the dormitories have achieved their purpose at a reasonable cost.

That they could better serve that purpose of providing a quiet place in which to study is clear from the results of an experiment which was tried last semester. A few rooms in Ames Hall were used to test the modern technological advances in the field of sound-proofing. These included putting a rubber buffer around the doors so that they could close tightly against the rubber, filling the crack between the door and the floor in order to lessen the noises from the halls that sneak in under the doors, and changing the sides of some of the windows so that one could open his window without opening himself to the sounds that emanated from the room next door.

It is unclear why these improvements were not built into the dormitories when they were first erected. In the test, they proved to be most successful in lowering the sound barrier. It is our purpose to suggest that the results of the test be implemented so that all of the dormitory residents can benefit from the advantages which these changes would necessarily bring.

We hope that the cost involved will not be a barrier to the introduction of these improvements. A great deal of the din of dormitory living can be removed with the enactment of these changes. The benefits far outweigh the costs.

COMMENT

By Fenno

The disgraceful conduct — or lack of conduct — on the part of the United States government during the recent Santa Maria fiasco cannot help but cause many Americans to wonder just what protection they can expect from their government. If a band of hoodlums can hold Americans as hostages while the United States gives tacit approval to such action by rewarding them with the classification of "rebels," what protection is there for American citizens in the future? Is it any wonder, given this example, that the Soviets seize and hold Americans with impunity?

The question of whether or not the taking of the Santa Maria was an act of piracy is beside the point. The episode involved nothing more than the kidnapping of nationals of other countries and the hijacking of an ocean liner. The United States should therefore have immediately proceeded to seize the ship at the earliest possible moment in order to evacuate the innocent passengers.

The argument advanced by apologists for our government's behavior in this affair is that the seizure of the Santa Maria was an act of revolution against a dictatorship, which we should not hinder.

But if Salazar is comparable to Batista, Galvao and Delgado give every indication of being the Portuguese counterparts to Batista's successor — Castro. Of course, if we wish to "liberate" the Portuguese by helping a Castro come to power, then the United States government acted correctly.

However, it should have been obvious that seventy men in an ocean liner had no chance whatever of over-throwing a dictatorship of 32 years' duration.

Now that this magnificent precedent has been set, we may expect to see more such "glorious revolutions." If our government's sorry attitude in this affair is an indication of further appeasement to come, then the next few years will be dangerous ones indeed.

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Williston Competition Begins

Professor Robert Braucher will address all second-year men interested in entering the Williston Competition at 1:30 p. m. today in the Meeting Room of Harkness Commons. Mr. Braucher, who was chairman of the Faculty Committee on Drafting which recommended and supervised the start of the Williston Competition in 1951, will speak about the Competition's history and importance today.

A group of this year's final round participants will be present at the meeting to answer any questions and comment on experiences gained from participating in the Competition. Members of the final round teams, who are all third year students, are Melvyn B. Fliegel, Los Angeles, California, Peter S. Griffith, Santa Barbara, California, A. Wallace Tashima, Los Angeles, California, and John C. Vincent, Jr., Cambridge, Massachusetts; Phillip E. Gladfelter, Jenkintown, Pennsylvania, James A. Greer, Mt. Kisco, New York, Alan L. Reed, Washington, D. C., and James S. Telfer, Bloomington, Indiana; and Basil M. Briggs, Bloomfield Hills, Michigan, Charles W. Gilchrist, Chevy Chase, Maryland, David C. Phillips, Stratford, Connecticut, and Jackson W. Wright, Hanover, New Hampshire.

These teams are competing for a first place prize of \$250. The second place team will receive \$150 and the third place team, \$100. The Boston Safe Deposit and Trust Company is offering these awards.

Students Must Register

The Board of Student Advisers has announced that second-year students entering the Competition must submit their names to the first-year secretary at the Board Office in Ames Hall between February 9 and 16. All second-year students are eligible for the Competition except members of the Law Review, the Board of Student Advisers or Ames Quarterfinal clubs.

The normal competing unit is a team of four students. Students may register individually and be formed by the Board into four-man teams. Students may also submit their names as a group and have the Board assign other students to make a complete team. Groups of either three or four students may enter as a full team.

Chairman of the Williston Competition, Frederick F. Greenman, Jr., 3L, New York, New York, has announced that this year's Qualifying Round will run from February 23 until March 8.

Choose Jurisdiction

Each drafting problem is submitted to several teams participating in the Competition. The team solutions are given to practicing attorneys in the jurisdiction in which the problem is laid to select the best solution on a comparative basis. The team submitting the best solution will qualify for the Semi-final Round, which will be held this fall. Teams may request a problem laid in a particular jurisdiction, and these preferences will be followed by the Board as far as possible.

The Williston Competition was inaugurated to provide students with an opportunity to gain experience in drafting legal papers. This experience is useful for the young attorney, as he is often required to write many papers which will be critically viewed by his seniors. The Law School curriculum provides few opportunities for this training in legal draftsmanship.

Program on Hypnotism Planned by Forum

By Robert C. Berry

The Law School Forum will present Dr. Martin T. Orne of the Harvard Medical School Department of Psychiatry in a program entitled "The Nature of Hypnotism," at 8 p. m. tomorrow night in the James Barr Ames Courtroom of Austin Hall. Professor Sanford Kadish, visiting professor of law, will be the moderator.

The format of the evening's program will be a talk by Dr. Orne on the general aspects of hypnotism, including its current and potential uses. A question and answer session with audience participation will follow.

As various articles written by Dr. Orne attest, the current interest in hypnotism has progressed far beyond the parlor games and stage theatrics of a few years back. There is at the present time great impetus among

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Bull & Bear Hears of Specials

By Keith Libbey

Bradbury K. Thurlow, vice president of Winston, Cohû and Stetson, speaking before the Bull and Bear Club last Friday, called for a shift in investor attention away from traditional blue chips to "special situation" stocks.

The "blue chips" have been the backbone of the bull markets since 1920. In the 1950's investors bought common stocks as an inflation hedge. They bought the familiar companies, those with well-known names. Today there may be real danger in this type of investment.

"It seems to me that it is about to become common knowledge that these big blue chips under today's conditions are not suitable investment media. They do not provide protection against the kind of cost push inflation we have had during the peacetime years since Korea, and they are selling at inflated price-earnings ratios which imply a future growth potential in earnings that cannot be logically shown to exist."

Reaction to Reduced Dividends

He foresees a distinct prospect that later this year the public will react violently to reduced dividends and earnings reports. The trick is to avoid being caught when that happens.

Mr. Thurlow recommends two suitable investment courses: the conservative, defensive stocks such as utilities, food and natural gas; and "special situations." Special situations is a catch-all including a wide range of conservative and high risk buys.

There are those resulting from specific economic expectations. Building stocks have been bought recently because the business outlook was poor. The theory is that these are contra-cyclical. A similar theory applies to machine tools.

Special Liquidation Situation

American Viscose provides an example of a rare "liquidating" special situation. Its major asset consists of Monsanto Chemical stock. Rumor has it that Viscose will liquidate, in which case its stock ought to be worth \$60 or \$70; present price is \$46.

A high risk — but a fascinating situation — is General Plywood, whose principal asset is a finishing process which it had patented

and which has been appropriated by most of the industry. If it wins its current patent infringement suit, the present \$16 price should rocket to \$50. If it loses, the stock will be immediately worthless.

First Year Class Gets Its Feet Wet

New England was having another part of its continuous snowstorm last Saturday afternoon. It would have been nice to have been up in Hanover, where the boys were having their annual Winter Carnival, this time complete with the "winter." But the first year class had other things planned, if not by them, for them. They were locked in concentration as they attempted to answer the questions on the Annual Practice Examination in Law held at Harvard University.

This was the first taste of a law school examination for the first year class. Some came through with headaches and some came through with "C's," the two not being in complete opposition. Most came through with a fear of things to come in June.

Perhaps indicative of the whole affair was the first year student who was overheard in the Harkness serving line along about 1:30 saying, "Remember how hard those first two weeks of Contracts were? I read over my notes, and it seems so easy now." He was seen, still shaking, late that night. *Pax vobiscum.*

ILC Schedules Ball For Tomorrow Night

By Ronald G. Russell

The International Law Club has announced that a social juggernaut will roll into Harkness Commons this Friday evening when the club holds its annual gala Costume Ball. From 8 p. m. until after midnight participants will be treated to the spectacle of faculty, staff and students commingling convivially in costumes or national dress.

The ball is open to all who would like to contribute to the atmosphere of *gemütlichkeit* and help in the consumption of copious quantities of white wine. Tickets may still be obtained from the International Law Club or purchased at the door.

Judd Addresses Young Republicans

By Paul R. Matia

Congressman Walter H. Judd of Minnesota spoke to an overflow crowd in the Harkness Meeting Room last Wednesday on the subject of Communist China. The Harvard Law-Graduate Young Republican Club sponsored Congressman Judd's appearance.

Formerly a medical missionary in China, Congressman Judd is a member of the House Committee on Foreign Affairs. He has served as a delegate to the United Nations and to the World Health Organization Assembly. In 1949 he introduced legislation for a Pacific Pact (now SEATO).



Congressman Judd

Congressman Judd began by noting that while there are disagreements between Russia and Red China, there is no ground for believing that there is a rift between them. No serious estrangement can occur because of their basic ideological agreement. Their current disagreement is merely over the means to be used to achieve their common goal — the defeat of the West.

Recognition of Red China

In regard to recognition of Communist China by the United States, Congressman Judd stated that he opposes it because it is unnecessary, there would be no benefits, and

there might be colossal losses. It is unnecessary, he said, because we have been conducting talks with the Communist Chinese for several years, thus obviating the often-heard argument that they should be recognized in order that the United States might be able to discuss differences with them. Recognition would be of no benefit to us simply because we have nothing to gain from it.

Colossal losses, however, might very well be incurred by the United States as a result of recognition. Such action on our part would necessitate similar action by those countries of southeast Asia that have so far resisted recognition. These countries all have a large Chinese population which is influential in banking and commerce, and the presence of a Red Chinese embassy-propaganda center would immediately subject these influential Chinese to terrific pressure. At the present time the vast majority of these overseas Chinese are maintaining their allegiance to Nationalist China.

Blow to Morale

Moreover, any act which would indicate a lessening of our resolve to defend Formosa would be a disastrous blow to the morale of our other Asian allies, Congressman Judd said. Formosa is both a political symbol and the keystone in the defense of southeast Asia. The Red Chinese are not really interested in destroying the Nationalists; what they really want is to remove the Formosan bar to their conquest of southeast Asia.

Congressman Judd revealed that the United States had been prepared to recognize Communist China on January 10, 1950. Not wanting to be first, our government prevailed upon the British to extend recognition before we did. For a similar reason, the British requested India to recognize the Communists. As arranged, India and then the United Kingdom recognized Red China. Before the United States could act, rioters broke into a consulate of the United States in Red China; President Truman cancelled our intended recognition. Later that year we were again prepared to extend recognition, but the Korean War intervened. Thus the British were left "holding the bag."

Turning to the question of admitting Red China to the United Nations, Congressman

Judd mentioned the frequently-used argument that the Red Chinese can't be dealt with unless they are admitted to the United Nations. He asked, "How are you going to deal with them if you do let them in?"

Another argument often heard, he said, is that with Communist China excluded from the United Nations, 600,000,000 people are deprived of representation in the United Nations. But, Congressman Judd pointed out, even if Red China were a member, those 600,000,000 people wouldn't be represented, since communist governments don't act in terms of the national interest of their countries, but rather in terms of international conquest. He cited the fact that although Communist China was suffering one of the worst famines in Chinese history, it was still exporting rice for political purposes.

Red China doesn't even qualify for membership in the United Nations under that organization's charter, Congressman Judd said. The charter clearly requires that all members be "peace loving," yet Red China seizes every opportunity to declare its opposition to peace. If this fact is to be disregarded, then at least the United Nations Charter should be amended to remove this requirement. Admitting that there were already non-peace loving members of the United Nations, Congressman Judd remarked that it would be impossible to expel them because of Russia's veto.

In conclusion, Congressman Judd urged that the United States "clear the atmosphere" by announcing in advance that it will veto the admission of Red China.

Forum

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practicing doctors to pursue the use of hypnosis in such widely divergent fields as treatment of alcoholics, obstetrics and medical practice in general, interrogation by police or military, and considerations of basic criminal traits.

Notable among Dr. Orne's specific interests have been two articles written by him in collaboration with Martha Brunner-Orne, "Group Therapy with Alcoholics," published in *Journal of Group Psychotherapy*, and "Treatment of Alcoholics," appearing in *Fields of Group Therapy*.

Dr. Orne has been an instructor in psychiatry at the Harvard Medical School since 1959.

This appointment followed his receipt of an M.D. degree from the Tufts Medical School in 1955, his residency in psychiatry at the Massachusetts Mental Health Center and his receipt of a Ph.D. from the Harvard Graduate School of Arts & Sciences in 1958. He also holds a B.A. *cum laude* from Harvard and studied at the University of Zurich in 1948-49.

The Forum, in addition to this program on hypnotism, is planning a panel later in the spring on extra-sensory perception. Though the two fields have no basic connection, the current scrutiny being directed toward these areas has led the officers of the Forum to believe they both would be of significant interest to the Harvard community.

Professors

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Professor Robert Braucher has assumed the teaching duties of an Agency section Mr. Cox was scheduled to teach. Professor Sanford H. Kadish, visiting professor from the University of Utah, is teaching Labor Law. Mr. Kadish taught the course while Mr. Cox was assisting in the recent presidential campaign.

Professor Richard H. Field is conducting Mr. Chayes' Civil Procedure section, and Professor David Westfall has taken over the teaching duties of Mr. Chayes' Corporations I section. With the loss of both Messrs. Chayes and Surrey, Professors David R. Herwitz and Louis Loss are now teaching both sections of Business Planning.

Professor Albert M. Sacks has replaced Mr. Cox as faculty adviser for third-year students. Professor Benjamin Kaplan has taken over Mr. Sacks' duties as faculty adviser for first-year students.

The RECORD will publish ten issues during the current semester. This decision is due to budgetary problems which would allow of no other solution. However, we expect to be back to our normal schedule of 24 issues a year beginning in September.

Subscribers who have paid for a full year's subscription can obtain a twenty cent refund by bringing their subscription cards to our offices at 23 Everett Street.

Summer Program Gets Many Early Applications

Early applications for the Program of Instruction for Law to be given this summer total 82, Assistant Dean William L. Bruce announced.

Practicing attorneys from all parts of the country will occupy the Law School campus from July 17 to 29 this year. They will take part in courses, lectures and seminars to be given by Harvard's faculty. Last year's program attracted 307 lawyers for the two weeks of instruction.

Early applications tend to be equally divided between attorneys who have been practicing only a few years and senior attorneys who have been out of law school for ten years or more. The early returns show the Midwest as the strongest regional area for applications. Only 11 applications have been received from the New England area. However, an influx is anticipated from this area later in the year.

Courses Offered

Courses in Administrative Law, Business Planning, Controlling the Use of Land, Estate Planning, Financial Planning and Legal Methods in International Disputes will be taught throughout the two weeks of the Program. Participating attorneys may take as many as three courses, but are encouraged to enroll in only two courses.

In addition to the courses, four lectures will be given on the role of the judiciary as a creative factor in the development of law. A conference on Improving Career Opportunities in the Field of Criminal Justice will be held. Attorneys will be offered a seminar on Professional Responsibility and Ethics.

Law Wives Plan Cocktail Party

All students will have a chance to meet members of the faculty over cocktails at the Student-Faculty Cocktail Party sponsored by the Harvard Law Wives Saturday, February 11, from 4-6 p. m., in the Meeting Room of Harkness Commons. Tickets for non-members of the Harvard Law Wives are two dollars per couple.

Georgia Bar Exam Conquered by Three Students

Farsighted third-year students are concerned not only about seminar papers and May examinations but also about passing state bar examinations and being admitted to the bar. Three members of the class of 1961 have already accomplished this latter feat.

The State of Georgia allows law school students to take the state bar examinations between their second and third year of law school. Lanier R. Anderson, Macon, Georgia; Walter C. Hartridge, Savannah, Georgia; and George H. Shapiro, Atlanta, Georgia, took the bar examination last September 7 to 9 in Atlanta. In December they received information of the favorable results. Messrs. Anderson and Shapiro were formally inducted into the bar when they returned to Georgia for the Christmas recess. Mr. Hartridge must still formally be inducted when he returns to Georgia.

Forum on Taxation To be Held in New York

The Committee on Taxation of the Federal Bar Association of New York, New Jersey and Connecticut announced that it will conduct a comprehensive two-day forum, "Estate Planning and Administration with Emphasis on Current Developments from the Tax and Business Viewpoints." The meetings will be held in the Hotel Statler Hilton, New York, on February 18 and 25.

Young Republicans To Present Panel

The Harvard Law-Graduate Young Republican Club will present a panel discussion on "The Role of Private Enterprise in America's Foreign Policy" tonight at 8 p. m. in the James Barr Ames Courtroom, Austin Hall.

The members of the panel will be Sinclair Weeks, former Secretary of Commerce in the Eisenhower Administration; Professor Milton Katz of the Law School; Professor Raymond Vernon of the Business School; and Prescott C. Crafts, Jr., international banker associated with the First National Bank of Boston. The moderator will be Louis Lyons, Curator of the Nieman Foundation.

Forum Elects Two; New Members Sought

Eugene Lipkowitz, 1L, Washington, D. C., and Stephen A. Szilard, 1L, Cambridge, Massachusetts, have been elected members of the Board of Directors of the Harvard Law School Forum.

The Forum has received acceptances from ex-President Harry S. Truman, Mrs. Eleanor Roosevelt, General Maxwell Taylor, Senator Barry M. Goldwater and Dr. Arnold Toynbee and presently plans a schedule of at least nine programs this semester.

Richard E. Smith, 3L, Allston, Massachusetts, president of the Forum, announced that the Forum will accept several new members this semester. Any interested students should visit the Forum Office at 23 Everett Street from 1:30-3:30 p. m. weekdays, or telephone Mr. Smith at STadium 2-8873.

ILC to Present Discussion Group

David R. Mummery, Graduate, Palmerston North, New Zealand, an officer in the Foreign Service Corps of New Zealand, will lead a discussion group on the topic of "The Rule of Exhaustion of Local Remedies." The meeting will be held Tuesday, February 14, at 4 p. m. in the Wheeler Room of Holmes Hall. Coffee will be served.

Seymour

(Continued from Page 1)

only to their particular clients but also to their communities, to use their efforts and learning to effect solutions to contemporary problems. The almost universal city problems of urban decay and the maintenance or improvement of the caliber of the magistrate court bench were examples used by Mr. Seymour to show the type of problems with which lawyers should be concerned. It was noted that Elihu Root summed up the proper position of the legal profession in regard to community responsibility by referring to it as "the public profession of the law."

For effective action in meeting the community responsibilities of the legal profession, Mr. Seymour contended that all lawyers should join their local bar associations. These bar associations can make known the feelings of their members on any issue more effectively than can the individual lawyers.

The first bar association devoted to more serious pursuits than social activities was the New York City Bar Association. This group was established in 1870 for the immediate purpose of improving the caliber of the local bench and for the more general purpose of legal reform in the state. Mr. Seymour pointed out that all contemporary bar associations on the local, state and national level now accept some responsibility, in varying degrees, for the conduct and caliber of the bench and bar and the general administration of justice.

The function of the A. B. A., according to Mr. Seymour, is to coordinate the activities of the local bar associations and to study and speak out on national and international issues. The policies of the A. B. A. are officially adopted by the 250-member House of Delegates, which has in the past expressed itself as favoring repeal of the Connally Reservation and favoring adoption of the Bricker Amendment. Mr. Seymour stated that many members of the A. B. A. had felt that the latter action was "unfortunate."

A. B. A. projects currently include a study of the possibilities for increased exchange programs for foreign law students and a committee of outstanding lawyers and legal scholars studying possibilities of attaining greater world order through law. An important A. B. A. activity is carried out through that organization's Federal Judiciary Committee, which unofficially checks and assesses the qualifications of all proposed appointees to the federal bench and makes this information available to the Attorney General.

Included in the audience for Mr. Seymour's address were several members of the faculty and guests. Among them was Dean Roscoe Pound, a sixty year member of the American Bar Association.

Patent Law Club To Hear Speaker

Mr. Robert L. Thompson, partner in the Boston patent law firm of Dike, Thompson and Bronstein, will discuss "Trademarks" with the Harvard Patent Law Club tonight in the Wheeler Room of Holmes Hall. Mr. Thompson received his LL.B. from the Law School in 1930. His talk will necessarily touch on aspects of unfair competition.

FEATURES SECTION

The Santa Maria Incident

By Allan W. Drachman

The seizure of the Portuguese ship *Santa Maria* by Henrique Galvao is an intriguing incident which evokes images of recklessness perhaps occasionally matched in naval history, but peerless for its legal intricacies.

Furthermore, it offers occasion to examine the principles of international law governing the rights and duties of states on the high seas, to test the efficacy of standards of piracy wrought in former days when piracy was a more acute problem common to all nations and to examine the relationships between states beyond the confines of municipal legal traditions.

To place our examination in its proper perspective, it is necessary to set out the five general limitations which international law places on the reach of municipal criminal law. It is universally accepted that a state may exercise jurisdiction over crimes committed within its territory; also generally recognized is the power of a state over its nationals who commit crimes within or outside its territory. Not a few states claim the right to take jurisdiction when an offense is against their national interest or a threat to their peace and security.

Jurisdiction

Very controversial is the right of a state to take jurisdiction solely on the basis that its national was a victim of the offense. The fifth basis of jurisdiction is the "universality" principle, which permits all nations to take custody of the person committing the offense. In this category only piracy is uniformly considered a basis of universal jurisdiction.

With these general principles in mind, we may now examine the specific questions of international law presented by the *Santa Maria* affair.

(A) DID PORTUGAL HAVE JURISDICTION TO TAKE CUS-

TODY OF GALVAO ON THE HIGH SEAS AND TRY HIM FOR PIRACY?

In earlier days, the principle that national sovereignty might exist over the seas was well recognized. Most maritime states claimed sovereignty over certain seas. Claiming states policed "their" seas against piracy. With the growth of conflicting claims to the sea and widespread maritime commerce in the sixteenth century, it became evident that the high seas were sufficient for all and might be inoffensively used by all. The interest in facilitating commerce and communication among all nations was translated into the principle of freedom of the seas.

Policing of the seas is accomplished ordinarily by the rule that each state has jurisdiction over ships flying its flag on the high seas and over all persons thereon regardless of nationality. The justification is that some municipal law ought to prevail aboard ship, and the flag state has the paramount interest. A corollary to the principle of free navigation is that other states have no jurisdiction on the high seas except in special cases, as when a ship commits an offense within a state's territorial waters and is pursued onto the high seas. Under this analysis, whether or not Galvao's act is piratical under international law is irrelevant.

Portugal has jurisdiction to apprehend Galvao on the high seas and try him for piracy or any other criminal offense as determined by Portuguese municipal law. For this purpose it is unnecessary to consider whether or not the metaphor of the ship as "floating territory" of Portugal rises to the dignity of a principle of international law.

(B) WOULD INTERNATIONAL LAW HAVE PERMITTED THE UNITED STATES TO BOARD

THE SANTA MARIA ON THE HIGH SEAS TO RESCUE ITS NATIONALS?

Since Portugal requested the United States to apprehend Galvao on the high seas, the United States could board the *Santa Maria* as agent for Portugal. Even without an express request from Portugal, the absence of a Portuguese police force or its inability to protect foreign nationals even with the exercise of due care would probably confer on the United States the privilege of using as much force as necessary to protect the lives of its nationals.

(C) WOULD INTERNATIONAL LAW HAVE PERMITTED THE UNITED STATES TO BOARD THE SHIP ON THE HIGH SEAS AND TO PROSECUTE GALVAO AS A PIRATE?

A pirate under the international law definition of piracy falls under the municipal law of his captors. Therefore it is necessary to decide whether the seizure was piratical both under international law and United States law. By federal statute the United States punishes piracy as defined by international law. Thus we direct our attention to the international law definition.

There is some conflict whether piracy is an international crime or simply a means of conferring common jurisdiction over acts which can be criminal only under municipal law. If the latter view prevails, the United States, which punishes the crime as defined by international law, seemingly has the tiger by the tail, since there is jurisdiction without a substantive crime under United States law. The view that piracy can be criminal only under municipal law is probably based on the rationale that there can be no crime without an international tribunal to punish it. To the extent that this view confuses substantive crime with procedural punishment, the better view should be the form-

er one: that piracy can be an international crime.

Article 15 of the 1958 Geneva Convention on the Law of the High Seas defines piracy as "any illegal acts of violence, detention or any act of depredation committed *for private ends* by the crew or passengers of a private ship or private aircraft *and directed against another ship or aircraft. . .*" (Italics mine.) Under this definition Galvao's seizure would not be piratical because it involved only one ship, rendering moot the question whether this was an act "for private ends" or political, public ends.

As nearly as anyone can tell, the State Department regards the United States, although a ratifying party, as not bound to look exclusively to the Treaty definition because the Treaty has not yet attained enough signatures to become effective. The United States might find that the requirement of two-ship involvement makes the Treaty definition more restrictive than the definition of piracy under customary international law, which the Treaty purports to declare.

The typical act of piracy was *robbery* for private gain, but "private ends" encompasses other violent acts such as rape, kidnapping, imprisonment, taking revenge or exercising simple malice. The rationale is that such acts present a danger to the free shipping of all states. On the other hand, acts by unrecognized insurgents are of another order.

To the extent that such acts are directed exclusively against the shipping of the parent state for political ends they do not present a danger to all shipping, so the rationale for universal jurisdiction ceases to apply. If insurgents declared a blockade against foreign commerce or intercepted neutral ships carrying contraband, the offended third state would have the power either to intervene to protect its shipping or recognize as belligerents the contending parties and not intervene. To this extent the "private ends" limitation is declaratory of the customary international law. However, let us proceed on

the presumption that "patriotism is the last refuge of a scoundrel" and that it is at least fuzzy whether Galvao was in fact acting in furtherance of a revolution or for private ends.

The comment to the 1932 Draft Convention on Piracy by the Harvard Research in International Law opined that a mutiny by crew or passengers would not be piratical *per se* on the theory that acts directed solely against the person in charge were not likely to be generalized into acts against ships of other states. However, the Comment pointed out that universal jurisdiction would attach "if the successful mutineers then set out to devote the ship to the accomplishment of further acts of violence or depredation."

Distinction

To illustrate this distinction the Comment cited Oppenheim, *International Law* (4th Ed., McNair's): "If the crew were to murder the master on account of his cruelty, and afterwards carried on the voyage, they would be murderers, but not pirates. They are pirates only when the revolt is directed not merely against the master, but also against the vessel, for the purpose of converting her and her goods to their own use." The reason for this distinction is that a mutiny with the *modus operandi* of a Long John Silver type has a more generalized plunder motive and therefore is a danger to the commerce of all nations. The interest in preventing a further attack or attempted attack by such mutineers against other shipping justifies universal jurisdiction.

To the extent that Article 15 of the Geneva Convention requires two-ship involvement it is more restrictive than the definition of piracy under customary international law. The reason for the restriction is probably a desire to provide a clearer factual basis for applying the extraordinary universal jurisdiction by avoiding difficult problems of proof of intent to attack, and to find a more uniform basis of agreement for the Committee.

If the United States had looked

to the customary international law and presumed Galvao to be acting for private ends, it would have had jurisdiction to apprehend him on the high seas and prosecute him as a pirate under United States law, subject to possible extradition rights in Portugal by treaty.

(D) IF THE SEIZURE WAS PIRATICAL UNDER INTERNATIONAL LAW, DID THE UNITED STATES HAVE A DUTY TO PORTUGAL TO ATTEMPT TO APPREHEND GALVAO ON THE HIGH SEAS?

Under Article 14 of the Geneva Convention, "All states shall cooperate to the fullest extent in the repression of piracy. . . ." However, the universal jurisdiction principle is conceived of as enabling rather than mandatory. The analogous situation is that of a district attorney who has discretion whether or not to seek indictment.

(E) IF GALVAO'S ACT WAS NOT PIRATICAL UNDER INTERNATIONAL LAW, DID BRAZIL HAVE A DUTY TO PORTUGAL TO RETURN THE SANTA MARIA?

Brazil was one of several Inter-American States who were signing parties to the 1928 Havana Convention on Rights and Duties of States in the Event of Civil Strife. Under Article 3, Brazil can regard the crew of an insurgent vessel as political refugees, but it is obligated to deliver the ship to the constituted government of the state in civil strife. If Brazil refused to return the ship to Portugal, Portugal could claim that Brazil was delinquent to the extent that the Convention is declaratory of Brazil's duty under customary international law.

This general discussion of the rights and duties of states under international law does not exhaust the set of legal questions which could be raised and is naturally subject to the larger supervening political truths and consequences. It is for the reader to merge the legal and political ramifications of the Santa Maria incident and determine for himself which should take precedence over the other.

Presidential Sons of Harvard

By Charles F. Waite

"Harvard hasn't lost a son — the country has gained a President."

This appears to emerge as the general theme of the current exhibit in the Langdell Library Treasure Room, entitled "From Harvard to the White House."

That which might at first seem (from its title) to be a travel-guide for Harvard professors turns out to be instead a generous serving of historical documents producing intimate (although somewhat isolated) glimpses of six men.

What ties the exhibit together is the fact that each of the six happen to have been (or, in one case, happens to be) a President of the United States as well as a Harvard alumnus.

Most Recent

It was at first suspected that the occasion for this particular exhibit was the recent ascendancy to the country's highest office of the most recent of the Harvard-President ingroup. However, since out of the six men honored by the Treasure Room only Rutherford B. Hayes attended the Law School, it was thought that the cause of the ex-

hibit must have been some historic occasion connected with Hayes.

A quick check of President Hayes' biography reveals that 1961 is the one-hundredth anniversary of his retirement from the position of city solicitor of Cincinnati — more than ample reason for a Treasure Room gala.

Whether this is or is not the impetus behind the six glass cases of books and letters, however, will not be known. The stateliness of the imposing Treasure Room itself precludes the impertinence of questioning the rationale of its contents. To quote Emerson (slightly modified), "If eyes are made for seeing, then a Treasure Room exhibit is its own excuse for being."

Exhibit Begins

The display, best seen in a clockwise fashion, begins to one's left as one enters the Treasure Room and ends on the east wall. For those unfamiliar with the Treasure Room, a convenient map, showing its location as well as other points of interest en route, may be obtained at the main desk of the library.

The exhibit is open on weekdays

from nine to five and on Saturdays from nine to one. Being of the low-boy glass case variety, it is best viewed by short people. It will remain until the middle of March, after which time representative spines of the involved volumes may be seen on various shelves in the Treasure Room's glass-doored bookcases.

Contributions

The lives of the six men are seen primarily as a view of their respective contributions to the political organization and structure of the United States. However, the human side is also in evidence; witness an entry from John Adams' diary, written while awaiting admission to the bar:

"27-30. Friday, Saturday, Sunday, Monday. All spent in absolute idleness, or, which is worse, gallanting the girls."

Adams was the first of the sons of Harvard to be elected President, as well as the first President to occupy the White House. He was graduated from Harvard College in 1755, being at the time not quite twenty years old.

He taught at Worcester for a year, then studied with a Worcester

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lawyer for two years. On his admission to the Bar in October, 1758, he hung out his shingle in Braintree.

Adams began his course as a leader of the American Revolution by petitioning the selectmen of Braintree for a meeting against the Stamp Act. A quotation from his diary on the occasion of the Boston Tea Party shows his "radical" position as early as 1773.

In 1796, Adams was chosen President by an electors' vote of 71 to 68. For this reason, his opponents called him "the President by three votes."

Career Chronicled

His career as politician and ambassador and finally President is chronicled in the lower half of his glass case.

John Quincy Adams had obtained his early education at a school near Paris and for a few months at the University of Leyden, but he chose to complete his education at Harvard College. For three years after graduating second in his class, he read law in the office of Theophilus Parsons, later Chief Justice of the

Supreme Judicial Court of Massachusetts.

He served as American minister in the Netherlands, Berlin, St. Petersburg and London and helped draft the peace treaty of 1814. President Monroe made him Secretary of State in 1817; he, as much as Monroe, was the creator of the Monroe Doctrine.

He was elected to the Presidency in 1824 and, against strong opposition, greatly expanded the executive powers. After being defeated by Jackson in 1828, he served eight terms in Congress beginning in 1831. On February 23, 1848, he had a stroke in the House and died in the Speaker's room.

Rutherford B. Hayes, the only Harvard Law School graduate of the Treasure Room sextet, was not a graduate of Harvard College. He received his undergraduate edu-

cation at Kenyon College as a member of the class of 1842.

Hayes served in Congress from 1864 to 1867, supporting Reconstruction and impeachment of Johnson. He was thrice elected governor of Ohio. His election to the Presidency came about only after Zachariah Chandler, chairman of the Republican National Committee, contested electoral returns from several southern states and Oregon. The election was judged by a Congress-appointed Electoral Commission, which, by strict party vote, elected Hayes, eight to seven.

Theodore Roosevelt was graduated from Harvard in 1880 and attended Columbia Law School for a brief period. He was a fifth cousin of Franklin D. Roosevelt and an uncle of Eleanor Roosevelt. His mother was a Southern sympathizer.

His career before taking office presents a varied picture. He sat

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— 1:40, 3:40, 5:40, 7:40, 9:30.

TELEPIX — Aren't We Wonderful
— 11:30, 1:30, 3:30, 5:30, 7:30,
9:30.

UPTOWN — The Sundowners —
(Thru Tues.); 12:55, 5:00, 9:10.
Carry on Admiral — 11:25, 3:30,
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in the New York State Assembly, ranched in North Dakota, failed of election as mayor of New York, was a member of the U. S. Civil Service Commission, was president of the New York Police Board and was appointed Secretary of the Navy. He organized the Rough Riders, the first U. S. Volunteer Cavalry, as a lieutenant colonel and was made colonel after the charge at San Juan.

Elected governor of New York in 1898, Teddy Roosevelt fought the spoils system and achieved taxation of corporate franchises. He became the nation's youngest President in 1901, when at the age of 42 he stepped up from the Vice Presidency upon McKinley's death.

Franklin Delano Roosevelt was president of the Harvard Crimson during his undergraduate days, setting forceful precedents as to that publication's political tone.

Roosevelt was graduated at Harvard in 1904 and attended Columbia Law School. He went to the New

York Senate from his Dutchess County district in 1910 and again in 1913. He voted for Woodrow Wilson at the 1912 Democratic Convention; in 1913 Wilson made him assistant Secretary of the Navy.

F. D. R. ran unsuccessfully for Vice President in 1920 as running-mate to James M. Cox. After his defeat, he filled the position of vice president of Fidelity and Deposit Co., New York, until 1928. He was elected President in 1932.

A particularly informative feature of the glass case concerning "that man in the White House" in his earlier years is a selection of several articles from Crimson pages written by the then future President.

The one disappointing part of the exhibit is that which concerns the sixth and latest Harvard man to occupy the White House, John F. Kennedy. In the midst of the musty and traditional Treasure Room trappings, a glass case full of new, shiny material is simply out of

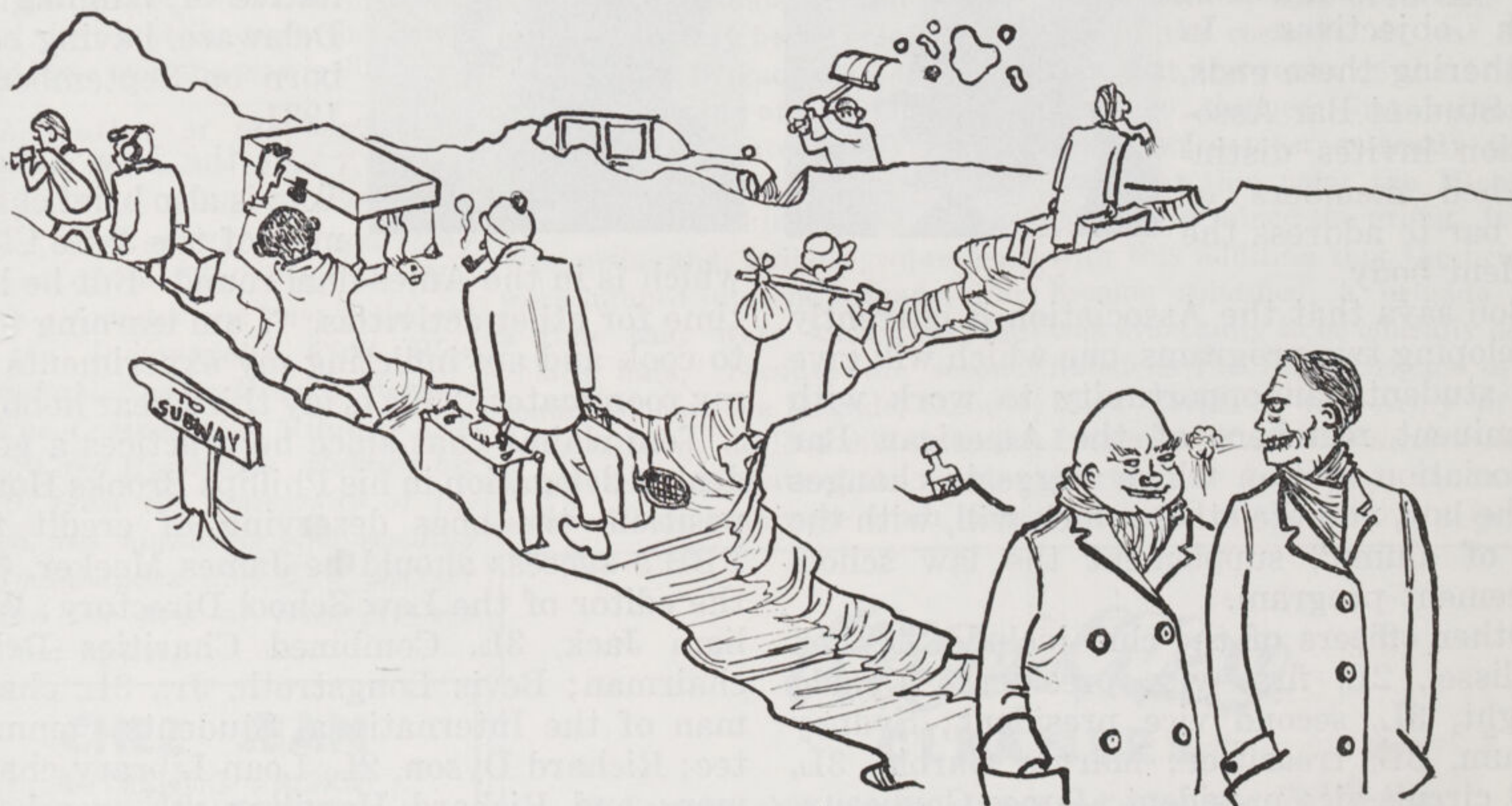
place. Even the copy of a Pulitzer Prize-winning book by this man looks comparatively new. One gets the feeling that somehow he is being cheated; someone must have substituted modern imitations for the true originals.

If and when the next Harvard-President's occupancy of the White House occasions a similar exhibit (or, at least, upon the 200th anniversary of Rutherford B. Hayes' retirement from the Cincinnati solicitorship), perhaps by then aging will have made this portion of the exhibit a bit more in keeping with the remainder of the Treasure Room.

At any rate, any dispassionate evaluations of the last of the six glass cases will have to wait until that time.

There is, however, one important lesson in history to be learned from the exhibit: with one exception, no Harvard-President was ever elected for more than one term.

Commentaries



"That practice exam gets 'em every time."

Did it Snow?

Like all other places in the East, Cambridge was blessed last weekend with some snow. The recent arrival only added to our mountains of leftovers from the last two visitations by the Nor' easters. Anyway, it's a great New England winter.

Langdell was, and still is, found only by following the narrow chasms that lead to the haven we call school. Along the way, our contemporaries could be seen with the garb

that they seemed to have pulled out of any old closet. After all, we have to keep warm and dry even if we *do* like the stuff.

Perhaps most typical of the way that the local folk are reacting to the situation is the remark made by one of the faculty in his deep Southern drawl when he was trying to cross the ice-pack that was Massachusetts Avenue: "Any ambital path we might seek to pursue seems as unreasonable as the vastness that lies before us."

Profiles of Leaders

Robert L. Frome, a third year student from Kew Gardens, New York, is president of the Student Bar Association at the Law School. A graduate of Forest Hills High School and New York University, where he received his Bachelor of Science degree in 1958, Bob lives in 29 Hastings.

The purpose of the Student Bar Association is to acquaint law students with the organization and objectives of the organized bar and to assist in the accomplishment of such objectives. In furthering these ends, the Student Bar Association invites distinguished members of the bar to address the student body.

Bob says that the Association is currently developing two programs, one which will give the students an opportunity to work with prominent members of the American Bar Association section which suggests changes in the law, and the other which will, with the aid of alumni, supplement the law school placement program.

Other officers of the club include Stephen Schlissel, 2L, first vice president; Donald Bright, 3L, second vice president; Sydney Traum, 3L, treasurer; Marvin Garbis, 3L, first circuit vice president; James Goubeaux, 3L, ALSA representative; and Andrew Schindel, 1L, and Richard Blankstein, 1L, members of the executive committee.



Thomas Francis Field is the chairman of the Law School Committee of Phillips Brooks House and also chairman of the *Ad Hoc* Committee for third year elections. A graduate of LaSalle Military Academy, Oakdale, New York, and the University of Notre Dame, where he received his Bachelor of Arts, Tom



has also completed the requirements for his Master of Arts degree from Oxford University, having already received the preliminary B.A. He is a native of Wilmington, Delaware, having been born on September 5, 1931.

At the Law School, Tom is also brief chairman of the Jaffe Club, which is in the Ames final round. But he has time for other activities. "I am learning how to cook and am inflicting my experiments on my roommates. This is my third year hobby."

Tom claims that since he practices a good deal of delegation in his Phillips Brooks House position, the ones deserving of credit for PBH's success should be James Meeker, 3L, the editor of the Law School Directory; William Jack, 3L, Combined Charities Drive chairman; Bevis Longstreth, Jr., 3L, chairman of the International Students Committee; Richard Dyson, 2L, Loan Library chairman; and Richard Hamilton, 2L, yearbook editor.

Tom is taking his third year emphasis in Taxation.

Recent Books

By Robert C. Berry

THE IRON BRIGADE, by Alan T. Nolan. Illustrated. With maps by Wilson K. Hoyt III. Macmillan Company, New York, 1961.

The Iron Brigade was the only completely western group in the Army of the Potomac. It earned its enviable title through its durability and courage in the conduct of the War Between the States. Regiments of this brigade fought at Second Bull Run, South Mountain, Antietam, Brawner's Farm, Gettysburg and other memorable sites of the eastern theatre.

Although many books on the Civil War have noted the exploits of the Iron Brigade, this is the first undertaking to deal with it as the central figure. This history has been produced through the efforts of Alan T. Nolan, LL.B. '47. The result is a well-documented, original source presentation that graphically depicts the full course of the life of the Iron Brigade and its men.

The Civil War is still the fancy of a great many people. Among interested historians and "fanatics," each battle is re-lived and re-fought every day, and the way the South could have won the war is discussed

The author of the book being reviewed this week, Alan T. Nolan, is a graduate of the Harvard Law School, class of 1947. As a lifelong student of the Civil War, Mr. Nolan is a founder and past president of the Indianapolis Civil War Roundtable, as well as a member of The Company of Military Collectors and Historians. Holding his A. B. from the University of Indiana, the author is now residing in Indianapolis and is a partner in the law firm of Ross McCord Ice and Miller.



Alan T. Nolan

heatedly and repeatedly. It is for these people that the present offering holds forth the most substance. With its detailed portrayals and copious footnotes and authorities, *The Iron Brigade* seems to have covered very carefully and very thoroughly that part of the War that dealt with one particular segment of the Army of the Potomac.

But lest interested amateurs be scared away by the foregoing, it should be noted that the footnotes and other authorities are listed at the end of the book, thereby preserving the readability and continuity of the story being presented.

The Iron Brigade had its start with the forming of individual regiments in the states of Wisconsin and Indiana. After formation and transfer to Washington, D. C., the Wisconsin and Indiana volunteers were lumped into one brigade. For a time they were known as the "black hats," because the second commander of the brigade, Colonel John Gibbon, decided his brigade should wear the hats of the regular army. These hats were much more

on the order of today's conceptualized "cowboy" hat, differing greatly from the small conventional kepi most often depicted as Civil War attire. As such, these black hats served to identify readily this particular fighting group.

The first part of the book, describing the formation of the regiments and their actions prior to combat, is understandably slow. The author has evidently felt it necessary to record the entire story, including the minute preparatory actions. This will make for rather forced reading for all except the most hardened Civil War adherents. But with the brigade's entering the actual fighting, at the Battle of Brawner's Farm, these accounts come into their own as thoroughly acceptable military history, and the pace perceptibly quickens.

The Beginning

The Brawner's Farm encounter cost the brigade a total of 750 of its 2000 men in slain, wounded and captured. This was only the beginning. Quickly after that were other battles, and Antietam was one of the costliest. It was after this that the ranks of the brigade were so thinned that reinforcements were most evidently necessary. At this point the Michigan volunteers joined the group. It was with this addition that the brigade became solidified, a brigade that was eventually to be officially designated as the First Brigade of the First Corps of the Army of the Potomac. If all the armies of the North had been put on review, standing at the far right in first

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position would have been the Iron Brigade.

When viewed from the specific vantage of a single fighting unit, certain concepts concerning the conduct of the war can be presented in fresh and revealing manner. This is the case with this book, and one example is the Battle of Gettysburg. Though that conflict lasted three days, most attention in the past has been directed to the last two when the North was gradually gaining the upper hand. But for the Iron Brigade, the fight was all on the first day. They were at the scene in the beginning, and their actions on the first day were such as to give the reinforcements of the second and third days ground upon which to fight, ground and glory which might not have otherwise been realized.

In connection with this battle and others, note should be given to the maps compiled by Wilson Hoyt, included to clarify for the reader the progress and deployment of particular actions.

Small Events

Also adding to the accounts are Mr. Nolan's descriptions of small individualized events that make the Civil War the unique history it is. One illustration of this also occurred at Gettysburg. A certain John Burns, a resident of that small town, decided it was high time he joined the fight, and he

came marching, gun in hand. His uniform was a brass-buttoned swallowtail coat and a curious high black silk hat. This was all fine, except for the fact that this aged gentleman was a veteran of the War of 1812, an event which occurred fifty years before the Civil War. Nevertheless, he fought.

Informal Truce

Then there were the informal truces established by the opposing sides, where both would agree to cease firing for a certain time. There was one instance when such a truce was broken by replacements of the Iron Brigade who knew noth-

ing of the truce and who fired on the unsuspecting Confederates. This brought fighting from both sides. But according to the author, "the truce was reinstated when a Confederate challenged a Sixth Wisconsin soldier to a fist fight on the Bowling Green Road. Putting aside their weapons, both sides watched while the combatants fought to what was generally declared a draw. Following the fight, the cheering sections shook hands all around, traded tobacco and coffee and agreed that there was to be no more firing until either side ordered an advance."

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