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Valparaíso Law School Forum

Valparaíso University Law School

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## The Forum (Volume 1, Number 3)

Valparaíso University School of Law

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# The Valparaiso Law School Forum

Vol. 1 No. 3

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December 1, 1971

## Course to Probe Legal Reasoning

Legal reasoning is slated to be the subject of the next semester's first-year course, Legal Problems II. According to the instructor of the course, Mr. Don Affeldt, the class will "analyze two current models of legal reasoning in order to deepen our understanding of rule-guided decision procedures."

Materials for the course will include Levi's *Introduction to Legal Reasoning* and Gottlieb's recent *The Logic of Choice*. Both lecture and discussion techniques will be employed during the semester, and a graded paper or final examination will culminate the work of the class. In addition, guest speakers from the law faculty will address the class on problems related to their specialized areas of interest, and free reading periods will be distributed throughout the semester.

"The plans for next semester represent a substantial revision of

the course when compared to second semester of last year," Affeldt noted. "Major changes have been made in the selection of materials, in the design of the class sessions, and in the evaluation procedures." The law faculty voted last spring to change the grading in the course from S/U to the normal A-F evaluation scale, in order to furnish quality points for work done in the course.

Affeldt, an Assistant Professor of Philosophy and Law in Christ College, taught Legal Problems II last year. When asked the reasons for changes in the course, he remarked: "One consideration was to take account of the work for Legal Problems I which carries over into the second semester. Even though the subject matters of the two courses are very different, the faculty agreed that some allowance should be made in the second semester for the time required to

prepare and deliver the oral arguments necessary for completion of the Legal Problems I course."

"Second, we learned a good deal from our experience with the course last year. The course was first offered in 1970, and some experimentation with the format and materials was appropriate. Now we can better gauge the most effective way to approach a course of this sort. This year we will be using treatises, not cases, and more instructional input will be provided before students are asked to respond with their own analyses."

"Finally, the guest speakers will provide obvious linkages between the questions and problems of this course and the material students have been encountering in their other courses, or will be getting into next year."

"The main aim of the course remains a philosophical aim," Affeldt continued. "By that I mean that we will be focussing on a question--what is the nature of legal reasoning?--which is a philosophical question, though it is of obvious interest to lawyers."

"And we will be dealing with that question philosophically, or analytically. Our goal is to understand a bit better a process which every lawyer and judge engages in every day, but which no one so far has understood very thoroughly."

Last year Legal Problems II co-

vered a broader range of topics, ranging from an analysis of the concept of justice to an exploration of such key legal notions as 'reasonable man,' 'stare decisis,' and 'policy reason.' Class periods were largely devoted to student presentations on questions related to these concepts. No student speeches are scheduled for the upcoming semester, though a number of discussion periods have been planned for the course.

One concern of the course is to provide the student with a structured opportunity to think through what he is learning in his legal education," Affeldt noted. "Unlike most of his other courses, the student will not chiefly be 'learning the law' in this course. He will, we hope, be learning about that process which has produced much of the law, namely legal reasoning. Even so, the point will not be to instruct the student in how to engage in legal reasoning; I assume he already knows a lot about that. Rather, we will jointly be working to understand this very process--both for the sake of knowledge and for the sake of useful insights into the lawyer's craft."

The class will not meet during the first and last weeks of the spring semester, and will observe some additional reading periods during the semester.

## B.A.L.S.A.

### Comes to V.U.

by Dale Weyhrich

A 1970 Lou Harris Survey for *TIME* magazine revealed that 40% of blacks between the ages of 14 and 21 felt that violence was necessary to win black rights. Currently less than 2% of the nation's lawyers are black. A 1966 survey showed that there were only 214 black judges. These statistics, taken together, point out that, despite the progress that has been made through the courts toward equal opportunities, there is a vital need for more black representation in the legal profession. It is necessary to develop a black leadership group with a vested interest both in the black community and in the legal system. Recruitment of minority students by law schools is an attempt to meet this need.

The National Black American Law Students Association was formed in 1967 to help black law students deal with the problems they were facing. The organization now has over ninety chapters. Its function is "to provide a means of focusing and articulating the viewpoints of black law students in American law schools, with the concomitant aim of improving the quality of life for the black law students, and developing means and methods by which law students may become increasingly involved in the problems of the black community."

An application has been filed to establish a chapter of this organi-

zation at Valparaiso University. Through weekly meetings of the black law students and programs for the rest of the student body, this group will seek to present the black students' viewpoint, to acquaint the other law students with the problems of the black community, and to attempt to insure a continuing enrollment of a viable group of black law students at Valparaiso. The local group is headed by Lloyd Fisher. The other officers of the group are Myron Chenault, Vice-President, and Carol Johnson, Secretary.

Members of the group attended a Midwest Regional Conference at St. Louis University during the weekend of November 12-14. Workshops and discussions of joint problems were held. The Valparaiso group was chosen to serve as a clearing house for information concerning community involvement by students at the thirty-six midwest region law schools.

During the coming semester, the black law students hope to sponsor programs and outside speakers to present the problems that they are seeking to deal with to the entire law school community. They recognize that both the creation of an organization for black law students and the "activism" that the group will sponsor may cause friction with some of the other students. However, they believe that their efforts to improve the lot of the black student will also bring benefits to the law school.

## Book Exchange at Law School

In law school expense, books run second only to tuition. The S.B.A. has decided to try to do something about book costs.

In the beginning, we were faced with three alternative plans: A "new" book store; a book exchange; and a long term plan involving the donation of law books by their present owners for the use of next year's classes on a check-'em-out-at-a-semester-at-a-time basis. Because of administrative problems with the third plan, and problems with the (University) administration on the first plan, we decided the best place to begin was the book exchange. Consideration of storage space and a desire to have some plan in operation as several days will be book drop-off days. Tentatively, Dec. 11 and 18, and Jan. 8 and 10 are planned for second semester. At this time the student will fill out a form for each book indicating its title, selling price (a list of recommended soon as possible also helped in the choice of plans.

How will the Exchange work?

price ranges will be posted) and his name. There will be a \$.25 fee per book. After this the exchange will open for the sale of books, tentatively from Jan. 10 through 15, 1972. Then the exchange will close for about a week, at the end of which checks and unsold books may be claimed. Books not sold and not picked up become Book Committee property. The Book Exchange will operate out of the S.B.A. office.

The Book Exchange may grow eventually into a "new" book store or a book library for students. At present it is merely an experiment to determine if there is a need for such an adjunct of the S.B.A.

To help it work out, we need your idea and your help. Specifically, those of you who have second semester books to sell, get them in early. And even more critical right now, we need manpower. If you can give even one or two hours on the dates mentioned, it will help this thing work.



# The Advocate

by Nolan Rappaport

## Characters of the Dialogue

Hiller      Swygert      Thomforde  
Brockington      Gromley

**SCENE,** The scene at first is a room at the law school, but soon changes to the interior of the Orange Bowl.

Hiller: I just overheard a vituperative harangue about an assignment I made in my legal process class.

Brockington: What was the assignment?

Hiller: I told the class to write a thousand-word essay on the subject of "creativity and the lawyer." Creativity is the very thing that separates the mediocre lawyers from the artists. This is a point that every aspiring young lawyer should grasp fully.

Thomforde: Bullshit. A lawyer is not an artist.

Swygert: The thing that separates the mediocre lawyer from the great lawyer is a mediocre intellect.

Brockington: Certainly a lawyer is not an artist in the sense that the great figures of literature are.

Gromley: We'll never get anywhere this way. Everyone is talking at the same time, pushing his own point.

Swygert: That's what lawyers are, pushers of their own views, the most intelligent one pushing with the most cogent argument.

Hiller: Tell me Mr. Swygert, is a plumber an artist?

Swygert: I thought you were serious about this subject.

Hiller: I am. Please answer the question.

Swygert: OK, a plumber is not an artist in any sense I can think of.

Hiller: What does a plumber do?

Swygert: He fixes pipes, makes faucets run and so on.

Hiller: Can he do these things in a variety of ways?

Brockington: I see what you're getting at, the plumber follows prescribed patterns in his work. So there is no room for originality... deviations of any kind really.

Gromley: Then one of the elements of art is flexibility, as opposed to the necessity of following a prescribed pattern.

Hiller: Exactly. That is why people who use the "paint by numbers" oil painting sets are not artists, even though they produce fairly respectable replicas of acknowledged works of art.

Gromley: But we aren't going to get anywhere this way. Not every person who paints on his own, without one of those paint by the numbers sets, is an artist. Clearly we need more elements for a workable criterion.

Hiller: I think we can get those elements if we start with "the poet." Maybe it is simply because fewer rank amateurs gravitate towards poetry than towards painting, but it seems that most poets would be acknowledged as "artists," whether good artists or bad artists is another question.

Brockington: That's true. Everyone has painted at one time in his life or written something, even if it was just a theme for an English composition class in junior high school; even at its crudest level, and with graphiti as the exception, the fruits of that labor are generally considered art.

Hiller: What does a poet start with?

Swygert: A clever idea.

Thomforde: No, when I think of a poet I think of emotion as being the stuff out of which his work is wrought.

Hiller: Do you mean that the poet talks about his emotions?

Brockington: No, that would be frightfully boring. The poet is generally reacting "to" something, reacting emotionally. The thing he is reacting to may be a beautiful woman, a butterfly, a sunset, or any other thing that might arouse emotion.

Hiller: How does he convey this reaction to a reader of his poetry?

Brockington: He doesn't really. It isn't his own reaction that he wants to convey. The goal is to produce a similar reaction in his reader, to have his reader actually experience the same feelings.

Gromley: Yes, it seems to be a circular process. The poet comes into contact with something, the thing produces a particular reaction in the poet who reproduces the thing, whatever it is, with words; reproduces it in such a way that the reader reacts in the same way that the poet reacted.

Hiller: Can anyone apply that circular theory to the work of a painter?

Swygert: The painter reacts to a vision of some kind, perhaps the same kinds of visions that the poet reacts to, a beautiful woman, a sunset, or whatever. He then uses his medium, paints and canvas, to create some thing that will produce a similar reaction in another person. The circle is then complete. It starts with a particular reaction and through the painter's medium produces the same reaction again, in another person.

Hiller: If there is a criterion that will enable us to determine when a given activity is an art it must include elements that exist in both of those activities.

Gromley: In both cases there is freedom from having to operate in prescribed ways.

Thomforde: Of course it is a question of degree between the freedom of poets and the freedom of plumbers. The poet is limited to an alphabet of 26 letters and the words of one language and...

Swygert: Let's not belabor the obvious. A difference in degree can be so great that it becomes a difference in kind. The difference between a man and an ape is one of degree, but the degree of difference there is so great that it becomes a difference in kind as well.

Hiller: Then let's settle on a "high degree" of freedom as an element of our criterion and define its exact limits later. The other important element is having a reaction to produce in another person. This one surely separates the poets and artists from the plumbers. As a third element I suggest skill on a high level, a level unreachable by the ordinary person, the person without talent.

Brockington: I agree with that point. The skills required for becoming a plumber are very common. Everyone can turn a wrench or operate a plunger. Information is the only thing that separates a layman from a plumber. But no amount of information on how to paint will make an accomplished artist out of the ordinary man.

Hiller: But is this just skill at using a paintbrush or is there something more to it?

Brockington: Definitely there is something more to it. The something more is composition, putting the sundry colors together in a way that will produce a desired effect.

Swygert: And choosing shapes. Many great artists have characteristic shapes that set them apart from other artists.

Hiller: Then our criterion contains four elements: freedom of action, a reaction that the artist wishes to make in another person, the necessity of a high level of skill, and a variety of things to put together in a composition that will produce the proper response in the other person.

Thomforde: What you mean is that the artist is a person who starts with a particular reaction and so through his medium, produces a thing that will cause the same reaction in another person. The rest is superfluous.

Hiller: Are we agreed on that criterion, that an artist produces something that causes another person to react in a desired way, a poem that will produce nostalgia in another person, a painting that will produce wonderment at the beauty of a sunset, a book that will produce a feeling of sympathy towards a particular situation, and so on?

Gromley: That is satisfactory.

Hiller: Then most certainly the lawyer is an artist.

Brockington: I can see that the lawyer tries to produce a particular impression, or reaction, in the minds of judges and juries, but is that really the same process that artists use?

Hiller: What is the process that a lawyer uses in his role as an advocate?

Gromley: Each side selects facts from a situation and presents them to the court in a way that is favorable to his client.

Brockington: He uses facts, inferences, speculation, psychological nuances, previous decisions, legal concepts, and so on to produce a legal mosaic that will cause a juror or a judge to react in a certain way. His job is even more difficult than putting colors and brush strokes and shapes together to produce a work of art. The painter does not contend with hostility and prejudice and predilections to certain outcomes, the things that a lawyer deals with in a courtroom.

Hiller: And in the face of that complexity the lawyer must serve to create a case for his client that will cause other people to respond in a particular way.

Swygert: I am satisfied. The process of creating something that will produce a desired effect in another person goes on in the same way with the lawyer's work as it does with the poet's work or the painter's work and so on.

Thomforde: I'll drink to that.



# Former Prison Chaplin Begins Legal Education

by Jan Ehrenberg

A member of the first year class was recently in the news. An article in the October 12, 1971 Chicago *Sun-Times*, the all news station WBBM, and Louis Palmer in his notebook on WVON and WGRT have all quoted Father Charles E. Doyle's testimony to the Indiana Advisory Council of the United States Commission on Civil Rights about racial problems. Father Doyle, a former chaplain at Indiana State Prison, gave factual information as well as suggested reforms for implementing civil rights protection in the prison.

Following the December 4, 1971 hearing, Warden Russell Lash of the Indiana State Prison and Father Doyle had a three-day front-page controversy in the *News-Dispatch* starting with Father Doyle's comments on racial bias at prisons. Warden Lash countered with a personal attack in an attempt to discredit Father Doyle's testimony to the commission stating, "The former Catholic chaplain, who is well known to Indiana State Police Intelligence for his anti-war activities and his popu-

larity with young Negro militants, does not speak for the majority of Negro inmates." Father Doyle responded that, "his testimony before the civil rights committee was based on more than 2,000 inmate interviews and personal observation during group dialogue involving both black and white inmates. He said the prison reflects institutionalized patterns of racial segregation and discrimination which can be eradicated only by vigorous commitment to civil rights at the highest leadership level." The report of the commission published on October 2, 1971 substantiated Father Doyle's charges.

Father Doyle's brother, Richard D. Doyle (Dem., South Bend) has sponsored a bill in the Indiana State Legislature which will take the system of appointments now used out of debt-paying politics and will create a Board of Corrections.

Effective January 1, 1972, it provides that seven knowledgeable citizens (bipartisan) be appointed by the governor. These citizens must have shown previous interest in penal reform and the Board must include a lawyer, a psychologist, and educator, and someone familiar with the problems of youth. The reform-minded commissioner is Robert Heyne.

Chuck, as his classmates call him, says that his experience in the prison motivated him to seek the power of a legal education to help alleviate the helplessness of the friends he made inside the walls. "For over 18 years, I have often been an amateur do-gooder, and I feel it is time to update myself and become more effective in helping people. The voices of pain that I hear are those of poor people who get hurt because they don't have the full protection of the law. Soci-

ety becomes more and more complex and the laws increasingly tend to protect the rights of others in power. It is the people on the lower end of the social scale that are increasingly more alienated and disenfranchised."

Chuck, while remaining a priest, wants to be able to help people take more effective advantage of the benefits of this society. The smiling priest combines his duties as pastor of St. Ann's Catholic Church in Beverly Shores with his first year studies. Beverly Shores is a resort community and his congregation and parish activities quiet down during the winter months. He brings to his law studies a divergent background of parish work, high school teaching and counseling, chaplain to a state mental health hospital, and counselor to a home for troubled boys, as well as chaplain at Indiana State Prison.

## Law Day Coming

The Student Bar Association will conduct the annual Law Day program during the last week of April--specifically April 26 through April 29. Since final examinations for the spring semester will be given early in May, those of you who do not wish to choose between preparing for final exams and attending Law Day functions should make your feelings known to your Student Bar representatives.

Proposed events include seminars on prison reform and the woman's role in society. A mock trial and moot court competition are also being planned.

The program will conclude with a banquet at St. Serbian Hall in Hobart, Indiana.

by Steve Fenton

Each year the Student Bar Association publishes a senior placement brochure to introduce graduating seniors to prospective employers. Although placement is its primary purpose, the brochure also serves as a public relations medium for the law school--it is distributed to pre-law counselors at various universities.

This year the brochure has been

increased to a thirty-two page booklet that includes: Dean's Notes introducing the Class of '72; a review of the faculty; introduction of the new faculty members; introduction of the '72 class and their action and areas of law, and previous legal experience; and also descriptions of the various organizations of the law school.

With this issue, it is the hope

## Lippert Appointed Editor

In response to a request from the *Forum*, Greg submitted the following policy statement:

The *Torch* will be based on two concepts this year that will serve as guidelines--scope and quality. By scope I mean that a reader of the *Torch* will be informed about all aspects of campus life--politics, meetings, outside speakers, fine arts, academic trends, sports.

In addition, the *Torch* will take a closer look at the city of Valparaiso and will keep up on movies, plays, exhibitions, concerts, and

other events of interest in Chicago and northwest Indiana.

The accent on quality will touch all aspects of the paper--writing, analysis and layout. Fair news reporting and thoughtful analysis of news on the editorial page will mean tight, logical content backed up by considerations of events in their broader context.

The overall aim of *Torch* news presentation is to provide a positive contribution to the discussion of events of concern, on campus and off.

## Senior Placement Brochure Enlarged

of the Class of 1972 that many interviews will be obtained and many employment opportunities will be forthcoming.

This year's circulation will be directed toward approximately one thousand law firms and corporations, and copies of the brochure will also be sent to the parents of the graduating seniors.

Happy Job Hunting--The Senior Brochure Staff

## Law Review Committee Formed

by Dale Weyhrich

In an effort to develop a better publication, a Law Review Planning Committee has been set up. Four third-year students and five second-year students are members of the committee which will be chaired by Bob Truitt.

The committee will evaluate any suggestions made for changes in the form and content of the review, investigate alternative methods of financing, formulate policies for next years review, and, in general, seek ways to make the Law Review a more distinctive publication. Some of the ideas that the committee is investigating include a proposal that each issue be a symposium devoted entirely to one area of the law and that the Review publish a yearly analysis of the work of the Seventh Circuit Court of Appeals.

The committee welcomes suggestions, ideas or reactions from any law student or professor. If you have some, contact Bob Truitt in LS-1 or anyone in the Law Review office (L-1).

## The Valparaiso Law School Forum

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# Bruce Berner

by Dee Bruening

Bruce Berner, a new member of the Law School faculty, is a person possessing the unique combination of intelligence and honest wit.

A VU graduate of both 1965 and 1967, he received his B.A. in English with a Law minor and continued here to finish near the top of his class at the School of Law.

Much of Berner's humorous side can be found in stories concerning his days as a member and leader of Delta Theta Phi fraternity. For example, when asked how he met his wife Linda, Berner explained his "telephone technique" for acquiring dates: instead of pretending to know the girl on the other end of the line, he would say, "You don't know me, I'm Bruce Berner of Delta Theta Phi. We are having a party on Saturday night. Would you like to go?" Mrs. Berner, then Linda Kniggendorf, was one woman who obviously appreciated his honest, forthright approach. The Berner Telephone Technique rapidly gained popularity and became a fraternity-wide "dating service."

After his graduation from law school, the Berners went to Westwood, New Jersey where he practiced for several years with a four-man firm dealing with equity and collection work, in connection with a local bank. Linda Berner, who did three years of her undergradu-

ate work at VU, received her degree in Education from Fairleigh Dickinson University in New Jersey, and is now the mother of a 15 month old baby girl.

Before beginning his practice, however, Berner said he "played at the piano" at night and drove a cab during the day while waiting for Uncle Sam and the Board of Bar Examiners to make up their minds which one wanted him.

Why did he decide to come back to Valpo? "I enjoy teaching," he said. "This is what I'd rather do." This year he is teaching Debtor and Creditor, Municipal Corporations, Appellate Advocacy, and possibly Criminal Procedure.

Berner feels that students now are "more mature, brighter and less afraid of being critical." He sees the increase in law school enrollment as having a number of possible explanations: financial promise, an increased population—the product of two wars, the security of school, the many uses of a legal background and the mistaken belief that "law is the answer to all problems." In reference to the last reason, Berner called that belief a "misconception -- many problems must be solved outside the law, at different levels than the courts."

Berner also recognizes the possibility of changes in legal education, but predicted that any drastic

changes would not be coming in the near future. A shortening of the time necessary for obtaining a degree, a trend away from the traditional Socratic teaching method, and an increase in seminars, clinical programs and pass-fail courses are three of the changes he mentioned; but he questioned the success of pass-fail courses since "grades are still a primary motivating factor."

Speaking of motivation, Berner admitted that during his law school career he often preferred sleep to classes. However he denied having a "photographic memory" in spite

of the fact that several fraternity brothers remember him reciting the names and page numbers of all the cases in their first-year contracts book. Berner explained this ability by stating that "an empty mind has lots of room for trivial garbage like that."

Aside from teaching, Berner enjoys an occasional round of golf. He was quite active in a variety of intermural sports as a student but claims to be more of a "TV athlete," now. His competitive energies currently seem to be channeled toward maintaining his title as a local bridge champion.

## Aphorism and Entr'actes of Fredrich Nietzsche

In revenge and in love, women are more barbaric than men.

Man's maturity: to have regained the seriousness that he had as a child at play.

What is done out of love always happens beyond good and evil.

We "must" repay both good and ill—but not necessarily to the person who did us the good or ill.

There are no moral phenomena, only a moral interpretation of phenomena.

Poets behave shamelessly toward their experiences: they exploit them.

There is subtlety in the fact that God learned Greek when he wanted to become an author--and that he didn't learn it any better.

Talking much about oneself may be a way of hiding oneself.

One person seeks a midwife for his thoughts; the other, someone he can assist. Here is the origin of a good conversation.

One does not hate as long as one has a low esteem of someone, but only when one esteems him as an equal or superior.

Our vanity would like to have it understood that what we do best comes hardest to us. A contribution toward the origin of many a morality.

"I don't like it." "Why not?" "Because I am not up to handling it." Did ever a man answer thus?

## Rappaport Raps

by Nolan Rappaport

I read Betty Friedan's book *The Feminine Mystique* in 1964. It is a moving explanation of how women became seemingly helpless creatures who preferred the security of being TV-watching housewives, while living vicariously through their husbands.

It was my earnest hope at that time that Friedan's book would become a catalyst in the area of the woman's role in our society. I felt that the mystique was bad and prevented women from becoming complete people.

The mystique has dramatically crumbled since then--though it is doubtful that any single book on the subject can rightfully claim credit for this phenomenon. Many women today have overcome that societal handicap and emerged as real people. This is indicated by the fact that women have entered most of the traditionally male occupations. There is a suit pending now to force the FBI, the last bastion of male chauvinism, to include women among its gun-carrying agents.

But not all of the effects of this movement have been good. I first noticed that all was not well when girls occasionally spat the phrase "male chauvinist pig" at me when I unwittingly insulted them by offering to light a cigarette or open a door. Recently a law professor

permanently alienated one of our distaff members by insisting that she should go through a door ahead of him.

And the more militant of the liberated women are not stopping at curses. They are preparing for physical assaults. Even at Valparaiso, which is still a relatively peaceful university, some 30 girls are hard at work mastering Kempo, one of the oriental martial arts.

Kempo combines punching, kicking, throwing, and wrestling techniques. The punches and kicks are very powerful. The power comes from a scientific development of natural movements.

This course is being taught by Mori Fukuda, a second-year law student. Mori, who has a 3rd degree black belt, is the only Kempo expert in the United States--he has studied Kempo for more than 10 years. And he also has experience as a teacher: he taught Kempo to girls while he was at Luther College.

But Mori, who has a Japanese law degree and plans to be an international lawyer, is a reasonable man. He is going to open his classes to guys next semester.

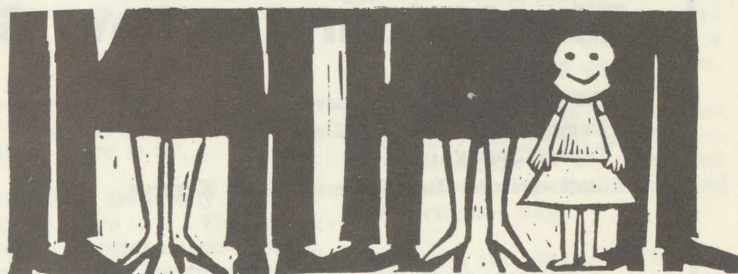
Chauvinist pigs of Valparaiso, it's time to unite and become militant!

## Announcements

There will be a Christmas party on December 10th from 9:30 pm to 1:30 am. The party is sponsored by the Student Bar Association and will be held at Jonynas Hall, located in Chesterton, Indiana.

The draft counseling service at the Union has changed its hours. The new hours are: 6:30 pm 9:30 pm, Tuesday through Thursday.

## Problematical Recreations



The family of a Quality Control Engineer consisted of 1 grandmother, 1 grandfather, 2 fathers, 2 mothers, 4 children, 3 grandchildren, 1 brother, 2 sisters, 2 sons, 2 daughters, 1 father-in-law, 1 mother-in-law, and 1 daughter-in-law. What is the smallest possible number of persons in his family?