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The Forum (Volume 3, Number 2)

Valparaiso University School of Law

Valparaiso Law Forum

Vol 3 No. 2 November, 1973 Valparaiso, Indiana 46383

BAR EXAM CREATES FUROR

by Dee Bruening
and Polly Riedel

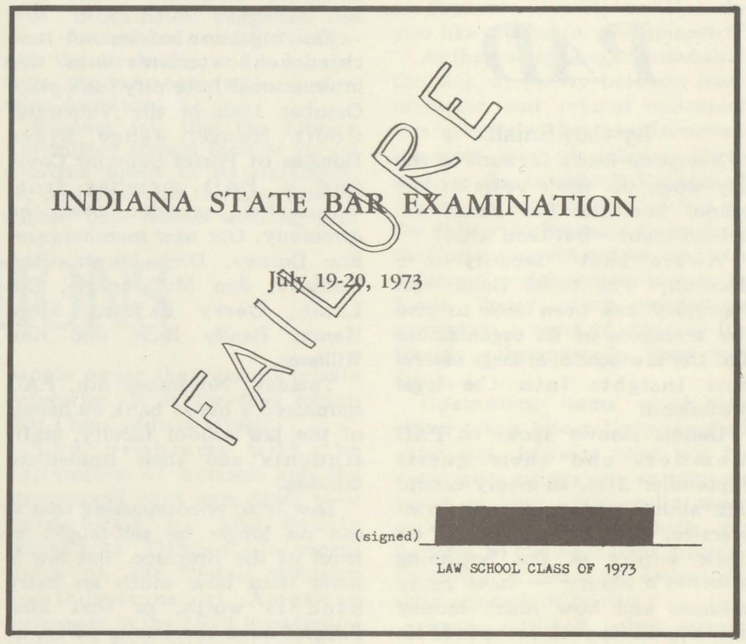
On July 19, 1973, law students taking the Bar Examination for the State of Indiana were treated to a Constitutional Law question which probably has sparked more controversey than any other bar exam question in recent years.

The question, which was written by Myron J, Hack, a South Bend attorney, focused upon a character by the name of Ms. (of course!) Clytemnestra Toris, a so-called student radical. Ms. Toris, better known as "Cly," was depicted as being a foul-mouthed, irrational, castrating, feminist lesbian (Lesbian in both senses of the word, since she was born on the Island of Lesbos) who delighted in writing inflamatory if not pornographic articles and editorials in her newspaper, the **Daily Dildo**. Because of her activities and articles campus authorities brought disciplinary action against her. Mr Hack's questions centered around due process, censorship and 1st Amendment issues raised by Ms. Toris's actions. (The complete question can be found on reserve in our library, along with pertinent correspondence relating to the question.)

Intial objections to Mr. Hack's question were raised by Margret G. Robb, President of the Indiana Governor's Commission on the Status of Women. In a letter sent 8/30/73,Ms. Robb requested Mr. Maurice G. Robinson, head of the state Board of Bar Examiners, to explain how and why this particular type of question was allowed to appear on the bar exam. She further requested statistics as to how many men and women took the exam, how many passed the exam, the number of men and women who missed this particular question, and the number of failures because of this question.

Ms. Robb expressed the following concern: "I think it is unfortunate that questions of this nature appeared on the examination. It is occurances such as this that makes the women's movement even more critical. I am certain that had the questions contained racial or religious slurs rather than sexual ones, the outcry would have been phenomenal. The legal profession should be highly sensitive to the too often used stereotype of women — a sexual object overly concerned with a castrated life."

Following this letter by Ms. Robb, Mr. Robinson asked the deans of the four Indiana law schools to respond to both the question and the letter from the Women's Commission. Dean Meyer's response from Valpo stressed two issues: "What should be done to prevent similar questions on future bar exams and what should be done to rectify any injustice to the examinees on the examination in question." On the first issue, Meyer assumed that with proper review procedures this type of question would not appear again. Concerning the second issue, Meyer proposed that the entire question by Mr. Hack be "thrown out." In commenting further, the Dean observed that, "Had such questions appeared on an examination administered at this law school, I shudder to contemplate the consequences. I would shudder because I could think of no possible justification (including "academic freedom") with which to respond to complainants." He went on to say that, "the context of the two questions is so demeaning to the status of women that an applicant should not be prejudiced by a failure to apply analytical and reasoning skills to the legal issues involved."



Mr. Hack's subsequent correspondence to Dean Meyer and to the bar examinees, attempting to explain and justify his question, is impossible to describe fairly and dispassionately. It must be read in its entirety to be believed. His sarcasm, arrogance and attempts at humor are possibly even more disturbing than his original question. Therefore, we encourage you to read his letters and "The Saga of Clytemnestra Toris — An Epilogue" which are on reserve in the library with the rest of the materials quoted above.

In spite of the outcry and discussions of possible litigation against the Board of Examiners, nothing in fact has been done to alleviate the situation except for the Board's limited action allowing women examinees who were disturbed by the question to petition for review. As of this date, we have no information concerning legal action against the Board by any state women's organizations. It seems that the best we can hope for is that questions such as Mr. Hack's will not appear again on this state's bar exam.

by Howie Ansorge

The results of the Indiana State Bar Exam given this summer seem to indicate a stiffening of standards for entrance to the Indiana Bar. Of the 463 law school graduates who took the exam, only 344 passed. The resultant failure rate was 25%, or slightly less than Bobby Douglass' pass completion percentage. In an interview with Professor Gromley, he indicated that over the previous fifteen years, the failure rate has varied between 4% and 12% annually.

There is no way of finding out exactly how many Valpo grads took the exam because the Dean's Office only receives a list of those who passed. As near as can be ascertained from word of mouth and various other grapevine sources, 52 Valpo grads took the Indiana Bar Exam. Of these, 19 failed, or slightly better than 36%. (Eat your heart out Bobby Douglass.) According to Prof. Gromley, before this year only three Valpo grads had flunked the Indiana Bar Exam since 1962. During those years there was an average of about 15 Valpo students taking the exam. In 1969 and 1970 this number rose to 25 and 30.

This year's state wide failure rate of 25% was the highest in the history of the Indiana Board of Law Examiners, in fact doubling the previous high rate of the last 15 years. However, the President of the Board denied that there was any preconceived plan of substantial tightening-up. Last year there was a meeting between the Board, the Supreme Court of Indiana and the Deans of the Indiana Law Schools. The Board and the Court were upset with the Law Schools over various matters, primarily the fact that the law schools no longer required some courses for graduation, particularly Evidence. Prof. Gromley feels a breach developed at this meeting; that the Board and the Court became irritated with the Law Schools.

Personally, Prof. Gromley feels that Valpo didn't pass that many ill-prepared people out of Valparaiso's Law School. He felt that last year's graduating class was no different than those of previous years. Although there were rumors floating around to the effect that the grading was going to be

(cont'd. on page 4)

JOHNNY VOLCANO

An Original Serial by
David Gilbert,
Editor of *Blackacre,*
Loyola School of Law.

Part I

Johnny Volcano had a plan. Which meant cancelled vacations and black coffee suppers for every cop in Chicago who wasn't on the take, and a new dishwasher for the wife of every cop who was. It meant every small-time hustler and runner and ambulance chaser could hit the streets again because the Heat would be burning higher, over their heads. It meant the shit would hit the fan.

Out from beneath the lavender sheets, out from the envy-green sleeping kimono, erupted Johnny Volcano, erupted the eternal erupter, as had been his mechanism since the first eye-gouging, ball-ripping scraps on the streets of Little Italy. Rocking ever so slightly on his feet on the bathroom carpet, he contemplated the three-inch decoration he'd worn across the bridge of his nose from that day he'd established his right to hawk the evening Herald on the corner of Roosevelt and Taylor, having used a combination of broken Kayo bottle and ball peen hammer to make his position clear. As he considered anew the scar, the handiwork of a rusted straight razor, he smiled ruefully.

"Ya bust your tail off, and what for?" he asked a cockeyed, grab-what-you-can world where the politicians and the preachers are the biggest grabbers of all. "Not a goddam thing, that's for what."

Johnny slowly peeled off his nocturnal silks and slipped his lightweight slumber-holster and its 32-calibre cargo from his left shoulder and hung it on the towel rack. Into the shower carefully, watchfully, the way he eased into one of those downtown dives where the blue plate special is a Mickey Finn and an escort to the backalley.

Johnny Volcano had a plan. To get more fun out of life. Ever since that morning he'd worn a hangover like a shroud and the bottle wasn't half empty, the morning the only dame he wanted was the maid with a Bromo, the morning when everything felt like a pocketful of daily double tickets that didn't come in yesterday. Boredom. The kind you get when you've either done it all or scared it out of town. And then the idea, the brainstorm, the 24-caret, seven-figure payoff — Johnny was going to law school. Because they'd never believe it. Not until every dealer and doublecrosser, every do-gooder and deputy had his day in court before the honorable Judge Volcano.

Under the steam and hot water, lathering his washboard belly, then paying special attention to the old vindicator, he snarled in anticipation. He could see them now — the sharks, shysters, sheriffs, and shake-down artists — getting the quick gavel and the bum's rush from a monkey-suited bailiff who did what he was told. And if they didn't like it, well, things are tough all over.

Johnny knew the scene. To be a judge, be a lawyer. To be a lawyer, go to law school. Law school, he thought, bulling the ebony Fleetwood into traffic. Loyalty Law School. Where Else? That's all they talked about back in the old neighborhood in the old days, when bootstraps were what you strangled a punk with until he gave you your money back. Go to Loyalty Law School if you want to make it. A church college, and the nuns will *surely* keep you in line, keep patent leather shoes off the girls and make the boys tuck their shirts in with ping pong paddles. That's a school, Johnny told himself.

"I'm not sure if we can help you," said Dean Spectator from behind his mahogany bulwark. "What were your LSAT scores?"

"Say, what?"

"LSAT scores. Didn't you take the test, Mr. Volcano?"

Johnny's eyes narrowed. In the streets they knew that meant sirens and widows. "Listen, pal, I passed every test they ever gave. See this scar?" He leaned in so closely his toothpick almost penetrated the Dean's beard. "What kinda test score is a scar like that worth. . . to you?"

Dean Spectator's eyes were wider than Michigan Avenue. "Day or evening division, Mr. Volcano?"

Johnny smiled. "Daytime, mac. I got better things to do after dark."

"I'll take care of it, sir."

"Thanks," Johnny said, tossing a roll of fifties, big as Dempsey's fist, on the Dean's desk blotter. "Buy yourself some statutes."

(cont'd. next issue)

PAD

by Cari Small

Everyone looks forward to the day when the three years of law school and the Bar Exam are behind them — but then what?

Aware that "security is a decision," Phi Alpha Delta legal fraternity has been able to give the members of its organization and the law school-at-large several new insights into the legal profession.

Dennis Hoover spoke to PAD members and their guests September 21st. In a very candid talk about setting up one's own practice, Mr. Hoover talked on such topics as the beginning attorney's library — how many volumes and how much money one should expect to spend. He spoke of a new attorney's relationship with the other practicing attorneys in the community; how to begin a clientel; and when the general practitioner should begin to specialize.

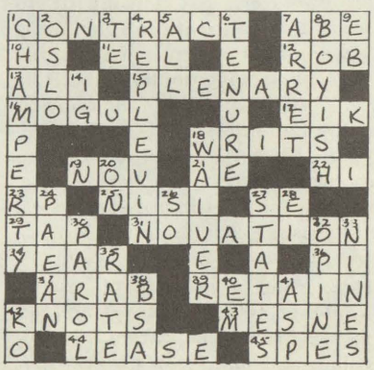
The fraternity sponsors these informative Chambers' Programs throughout the year. Tom Walker spoke October 8th to PAD members and their guests. An in-house corporate attorney for G.C. Searles, Mr. Walker presented corporate work in light of the variety and freedom it gives the individual attorney.

Phi Alpha Delta sponsored Gary Police Chief Charles Boone on October 30th for the benefit of the entire law school. Chief Boone presented "Law Enforcement: Its problems and accomplishments in the City of Gary." Afterward there was a question and answer period.

Fall initiation of second- and third-year students into this international fraternity took place October 15th in the Valparaiso Court House. Judge Bruce Douglas of Porter Superior Court and a PAD member from Vanderbilt presided over the ceremony. Our new members are: Sue Dorney, Dick Muntz, Ron Kooistra, Jim McGonnagle, Bill Lamb, Gerry LaRang, Steve Henry, Randy Rich, and Ken Williams.

Tuesday, November 6th, PAD sponsored a blood bank on behalf of the law school faculty, staff, students and their immediate families.

Law is so encompassing that it can no longer be self-taught in front of the fireplace. But law is more than how much an hairy hand is worth, or that Mrs. Palsgraf sued the wrong party, or that nine Supreme Court Justices could have that many reasons for their decision(s) in *Griswold*. . . . .PAD tries to fill the gap.



PIGSKIN REVIEW

by John U. Nitas

For the second straight year the LAW School I entry in the intramural football league made it to the championship game. This time, however, they could not repeat as champions bowling to the Phi Delts, 13-7. Finishing with an 8-1 record the teams' three year total was 21-2. The occasionally potent offense was led by quarterback Craig "Bobby D." Hanson, receivers Dave "Crazy-legs" Bangert, Dan "T.D." Sigler, and O.J. Mandon. Playing center, with a snap faster than a speeding bullet, was Al Kirkland. Other mainstays on offense were Ken Manning (when he showed), and the only non-kicking extra point specialist in the history of football, Dave "Choo-Choo" Sabitini.

The often paltry offense was set up time and time again by the tough play of the defensive unit. The rush was headed by Billy Joe Keller, Steve Wolaver, Al Kirkland, and Ken Manning. Also helping the rush when not playing middle linebacker were Jim "Willie" Lanting and Morris "The Cat" Sunkel. Last but not least, spearheading the ball-hawk defensive backfield were Drew "The Hammer" Schnack, Gerald "Toy Cannon" Bowman, Jim "Night-train" Johnson, Tom Mandon, and Lee Wilson. To the other LAW School entries in the league — maybe next year!

BOARD PLANS ADDITION

by Marie Failinger

(Ed. Note: At the Friday meeting, the Board of Directors gave the go ahead for the architect to draw up plans for the various options noted below.)

On Friday, October 26, the Buildings and Grounds subcommittee of the University Board of Directors will decide whether to proceed with plans for a new law library addition.

One option to be presented is a three-part expansion program. Part one would put a second story on the present library, providing additional stack space and temporary seminar rooms. Part two would add more faculty offices extending from the office side of the building. Part three would furnish seminar rooms at the courtroom side of the law school. These additions might be built simultaneously or separately, depending on architectural considerations.

The Committee will face a proposal of needs prepared by the Law School Library Building Committee appointed by President Huegli at the end of May. Members include Deans Meyer and Foster, Vice-President Gram, Professors Gahl, Hess, Bartelt, and Brockington, and students Don Weidner and Steve Honett.

In preparation for the proposal, Prof. Hess last summer outlined needs for double the present stack space and a special collections room. At the present rate of library acquisitions, this would accommodate over six years of growth. Hess also included an office for a second professional law librarian, workspace for two full-time clerks, storage, and security requirements for the front desk. Students would especially benefit from a proposed increase in seating from 125 to 195 places complying with the AALS standard, and five closed carrells for research and writing. A microfilm room would house both microreaders and photocopy machines.

The Library Committee also requested more faculty offices, two seminar rooms seating approximately twenty each, and more administrative and secretarial space. Central air conditioning was recommended as a "must" in any major expansion program. Prof. Brockington suggested the need for isolated seating throughout the stack area and a lounge-type reading room with comfortable furniture.

Weidner felt that the Library Committee should include future students needs in its statement. He proposed that the Law Review should have better working conditions and Moot Court could use at least one office and a closed carrell in order to free other carrells for the rest of the student body. He thought that SBA should have another office to accommodate programs such as the book exchange and the *Law School Forum,* and that the Clinical Program should have an office for research. Another idea he presented was an expansion of the parking lot to accommodate all law student cars. Of his suggestions, only offices for the Clinical Program and SBA have been strongly recommended by the Library Committee.

The Committee on Buildings and Grounds must first decide if the Library Committee's proposal is satisfactory in scope and if financing is feasible. If they pass this proposal, they will authorize construction drawings and review them again. The approved drawings must then be priced out and sent to the Executive Board of the Board of Directors, who give final assent.

JAEGER

by Mark Ilten

On the Friday of Homecoming Dr. Walter Jaeger, editor of the third edition of *Williston on Contracts,* spoke in the courtroom on Products Liability or "How do you like worms in your spinach?"

At the outset, Jaeger noted that the lack of privity between manufacturer and injured consumer was generally the manufacturer's strongest line of defense. However, in the landmark decision of *Klein v. Duchess Sandwich Co.,* the California Supreme Court held that privity could not be used as a defense for deleterious matter in foods. Today, every jurisdiction recognizes a right of recovery for foreign substances in food and drink.

Cosmetics, items which are either taken internally or applied externally, likewise need not be used with privity to sustain an action at law. Additionally, most articles of clothing which are harmful to the consumer give the consumer a cause of action despite any lack of privity.

Jaeger outlined other various areas where the defense of privity was no longer a bar to Tort suits. Motor vehicles, tires, and aircraft all now fall under the "no privity" rule.

Surprisingly enough, there are areas where there is virtually no defense which can be interposed between the injured and the owner. Most notable is the breach of warranty of seaworthiness. In this instance, seamen have an absolute right of recovery if their injury is due to the "unseaworthiness" of their vessel. Courts have been extremely liberal in discovering unseaworthy conditions. (Banana peels, slimy railings, etc. have all been held to constitute unseaworthiness.)

New developments in Products Liability include a right of recovery by an innocent bystander (three jurisdictions), recovery for property damage in the absence of personal injury, and the warranty of habitability. Under the warranty of habitability, the builder-vendor of a house may be held liable by the purchaser for any injury occurring due to a defect in the house.

In closing, Jaeger noted that most courts are now looking simply for a breech of warranty to create a cause of action. He suggested always joining Tort, strict liability, and warranty actions together. Most courts are no longer concerned whether the action sounds in Tort or Contract.

A complete discussion of cases relating to Products Liability may be found at 46 *Chicago Kent L.R.* 123.

REACTIONS

October, 1973
Editors
Valparaiso Law Forum

In your editorial, "The Crowd Pleasers" (September, 1973), you stated that ". . . Congress has no business meddling in the private affairs of an American business — no matter how much the public may support the move." I must respectfully disagree.

Business is notorious for lining its pockets at the expense of the American public. It appears to me that you are not only condoning that practice, but also chastising the legislators who have at least in such a minor way retreated from a "laissex faire" attitude toward business enterprises. I suggest that all the American people must be considered in decisions which affect them, not just the profiteering business entrepreneur. Such consideration, by and for the people, is not meddling.

Your statement was in reference to football legislation. I personnaly find the area rather trivial and insignificant; especially in relation to the many critical situations in our nation where it has become more and more apparent that business cannot continue to exploit the American people under the guise of private enterprise. It is for that reason that I here address myself.

The problems with the relationship of business and the government have once again been evidenced by the Senate Watergate Committee's recent focus on the illegal campaign contributions of American businesses in the 1972 presidential election. One major corporation after another has admitted such crimes in the last few months. It appears that the American electorate was victim to deceptive and fraudulent practices by both individuals and by American businesses, such as to completely corrupt the democratic processes and to co-opt the American dream. I doubt anyone would suggest such activity is within the province of free enterprise and its private concerns.

But politics is not the only arena where business must abstain from such practices. Another area of crucial concern is that of environmental protection. It is evident that private enterprise cannot be allowed to persist in polluting at the expense of the American people and of future

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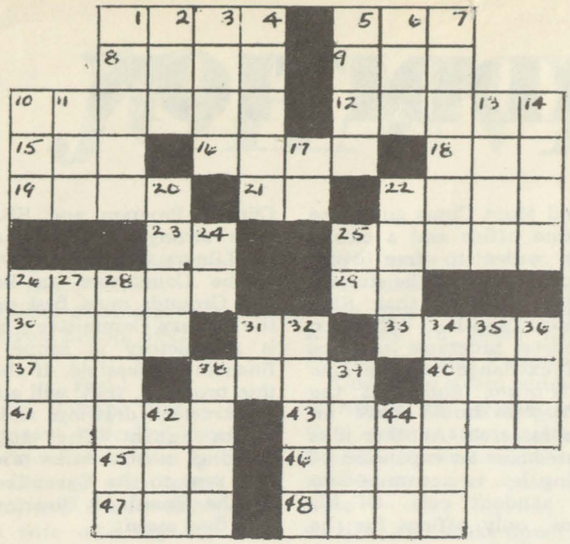
The Valparaiso Law Forum

Editor: Mark Ilten *Vol 3 No. 2*
Managing Editor: Howard Ansorge *Nov., 1973*

The Valparaiso Law Forum *is published during the academic year by the students of the Valparaiso School of Law. The views expressed herein are not necessarily those of the students, faculty, or administrators of the School. Signed articles are the opinions of their authors. Unsigned articles were written by the editor and are expressions of his opinions. The* Forum *is located in the Student Bar Association office at the Valparaiso School of Law, Valparaiso University, Valparaiso, Indiana 46383.*



Across

1. Hurry
5. Distress signal
8. Noun ending
9. King. . . . .
10. Shout loudly
12. Harangue
15. Administrative Procedure Act (abbr.)
16. A squirrel (slang)
18. Impertinent peeping
19. Opposite of nights
21. Musical note
22. What this is
23. Preposition
25. Avarice
26. Nut
29. Drinkers' group (abbr.)
30. Similar to a wing
31. Preposition
33. .....court
37. Love (alternate spelling)
38. Lean and fit
40. A falsehood
41. Freshman cadet
43. Perforate
45. Affirmative vote
46. .....gin
47. two times five
48. Row

Down

1. Pass on
2. United Nation's Law (abbr.)
3. Flatbottom boat
4. Make cutting blows
5. Cease
6. Possessive pronoun
7. Metal fastener
10. Leroy Brown
11. Environmental Protection Agency
13. Accurate
14. Looked at
17. Electrical Engineer (abbr.)
20. Heavenaly body
22. What we do for finals
24. Preposition
25. Georgia (abbr.)
26. A palpus
27. Jewish calendar
28. ".....emptor"
31. Conjunction
32. Opposite of last
34. Of greater age
35. The Mideast has it
36. Golfers' aid
38. Decade below twenty
39. Metric prefix
42. Open date
44. Female deer

* * * * *

RAFFLE

The Law Wives are sponsoring a raffle which promises to generate high interest among both students and faculty. Six prizes will be awarded, all of which are high in alcoholic content. First prize will be $35.00 worth of liquor, booze, and assorted other moonshine. Second prize is $25.00 worth of liquor; Third prize is $10.00 worth of liquor. Fourth and fifth prizes are lesser amounts of assorted booze. You guessed it; sixth prize is a six pack.

The Law Wives will begin selling tickets on November 8th for $1.00 each. The winning tickets will be drawn at the Law Wives December 13th meeting in order that the prizes can be distributed in time for finals.

A portion of the eighty proof proceeds are to be donated to the Law School. The Law Wives are interested in hearing your ideas and suggestions as to what the money should go for — possibly a covered sidewalk to the Orange Bowl for those rainy days. . . we'd hate for any of the Profs to catch cold.

BAR EXAM

(cont'd. from front page)

tougher this year, the same rumors had filtered around last year and only 6% failed. A former student told Prof. Gromley that he had studied for the exam but really didn't put out a maximum effort because, he said, he had never known anybody who had failed it before.

Prof. Gromley is planning to undertake an investigation of those people who flunked the Indiana Bar Exam in order to determine exactly what subjects they did not take while in Law School.

No matter what the explanations or reasons may be, the Board is obviously grading harder. It is hoped that this article will satisfy the Due Process requirements lacking this past summer by putting the Class of '74 on notice that the Indiana Bar Exam is no longer "easy pickin's" for Valpo grads.

CAUCUS CORNER

WAMM

by LMB

In the last ten years the emergence of minority representative groups has captured the national fancy. This, in conjunction with the post Kennedy penchant for initials, led to the activist renaissance. Life became determinative on JFK, LBJ, and LSD. Magazine publishers took up the public cue and every issue covered the leaders of NASA, NAACP, CREEP, and NOW. As this trend in national publications continues on intimate exposes by the characters of the floodgate affair it is our pleasure to introduce you to the WAMM Caucus. The interview which is to be presented was with Robert Riggs the chairman of the White Anglo Male Minority Caucus.

Query: Mr. Riggs, to what do you owe the emergence of WAMM and its climb to national prominence as a minority organization?

Mr. Riggs: Well, in the past we were consistently maligned as a self-serving majority who suppressed all. Out of fear that this may be true we stepped aside and allowed the minorities to move into all fields. By the time we had realized what had happened we had no place to go.

Query: Now, Mr. Riggs, since your organization was once a majority how do you strive to correct the situation of pigeon hole predjudice?

Mr. Riggs: Having been quiet for so long it is difficult to encourage members to have pride in their species. I've heard of attempts by members to naturalize their hair style and of trying to shave their legs with double edge blades. Our first move was to install self pride through publications such as *White Like Me* by Robert Sheldon and *Alabaster,* an all white magazine. The more militant members of our ever growing force have boycotted Barbara Walter's home and held massive rallies constructing fires and chanting, "Ban the jock!"

Query: Those are very commendable efforts, Mr. Riggs. As we know, each bonafide minority must have a set of objectives. Do you have such?

Mr. Riggs: Most assuredly we do. The caucus has a sevenfold program which we are striving to snatch from the dream world and make reality. First, we request that the common law dower rights which are still held sacred in a number of areas be abolished. Second, we seek the elimination of the preferred status of mothers in child assignment during custody actions. Third, a correction of the discriminatory dispensation of alimony allotments. These are the major contentions; the others concern educational and occupational opportunities.

Query: Please, continue, Mr. Riggs.

Mr. Riggs: As to school admission, we seek that our members with higher scores and better academic records be allowed to enter institutions where they qualify. To increase the productivity of our members we request preferential seating in libraries throughout the nation between 10:00 and 10:40. Our final request is that in all future governmental activities only union plumbers be used to plug leaks.

Query: Very interesting, Mr. Riggs. Do you have any final comments?

Mr. Riggs: Yes, sir. We are individuals who seek a chance to stroke the ball over the nets or predjudice into the forecourt of life.

Query: Very well put, Mr. Riggs and good day.

Citations for the issue: A) A special thanks to the crack electronics crew for ending the Valparaiso brown out. Justice is blind but law students aren't. B) A special citation to the powers that be on fulfilling the need of the 5'7" and under law students to be instructed by those they can identify with.

* * * * *

LETTER

(cont'd. from page 3)

generations. However, where profits are a concern the attitude has often been, "Forget the environment, it's our private affair, the public be damned!" When such is the case, the government and the public have every right and a definite responsibility to act.

Justice Roberts, writing for the Court in *Nebbia v. New York,* 291 U.S. 502, 54 S.Ct. 505, 70 L.Ed. 940 (1934), stated that:

"The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of people. . .any. . .form of regulation is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty."

It appears to me that where business ventures adversely affect the people, it is no longer a "private affair" but rather an affair of public concern.

Candice Hektner