

1989

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Valparaiso University School of Law

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THE AMICUS

VALPARAISO UNIVERSITY SCHOOL OF LAW ALUMNI MAGAZINE

VOL. 2, NO. 3



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EDITORIAL BOARD

Mary G. Persyn, Law Librarian and
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Katharine E. Wehling, 83,
Assistant to Dean-Admissions
Gail G. Peshel, Director of Career
Services & Alumni Relations
Curtis W. Cichowski, '81, Editor-in-Chief
Assistant Dean
Alan Fore, '91, Editor, *The Forum*

LETTER FROM THE EDITOR

Technology. What a concept. With nothing more than an IBM model 25 personal computer (loaded with WordPerfect software and Bitstream Fontware) and a Hewlett Packard LaserJet printer, we discovered that it was possible to enter the world of desk-top publishing. With the exception of the photographs and the cover, the entire contents of this issue were created in-house, *including the typesetting and layout!*

Apart from the technology of the computer, the one thing that really made this possible is what I like to refer to as "computer courage." You simply cannot be afraid to hit a key, any key, just to see what it does. We hit every key on the keyboard; we made a number of mistakes, but we learned a great deal. Of course, it is easy to exercise computer courage when you have "undelete" at your disposal. "Undelete" is a computer function that gives you a second (actually, it is more like a third) chance at computer life. When you are about to do something that the machine recognizes as a command from a rookie, it will often ask "are you sure?" before it actually carries out your command. Nobody likes to be questioned by a stupid machine, so the answer to that question is almost always a resounding "YES!" from the person behind the keyboard - who slams the "Y" key with assurance.

The computer faithfully executes your command. Then, and only then, you realize that you have deleted the last three weeks of work in two quick key strokes. Never fear, simply call for the "undelete" function. The computer, fully understanding that you are only human, will then save you from your own executed stupidity. And it does so without making any judgments on your (in)abilities and without any hint of an "I told you so" attitude. You may then continue in your normal self-assured manner as if nothing ever happened.

Imagine what it would be like to have the option of "undelete" in your everyday practice. I can easily recall several times in my own past where I would have been well served by exercising an "undelete" option. But, the computer is only a machine. Is it possible to learn something of value from a machine? What a concept!

Curtis W. Cichowski, '81
Editor in Chief

Cover Photo: Having exhausted the photographic history of the various buildings which have housed the School of Law, we now turn to the scenes of northwest Indiana. This photo was taken by Frederick F. Eichhorn, Jr., who lives in Miller, Indiana. This tremendous and tranquil view of Lake Michigan, with the Chicago skyline in the background, was photographed from his yard, which, obviously, is along the southern shore of Lake Michigan. Mr. Eichhorn, a native of Northern Indiana, is Senior Partner of the law firm Eichhorn, Eichhorn & Link, in Hammond. His admirable service to the profession and the bar has included a recent term as President of the Indiana State Bar Association. We are very grateful to Mr. Eichhorn for allowing us to use this photo and for his generous donation of some of his photography to the School of Law.

LETTER FROM THE DEAN

FAREWELL, CLASS OF '89

One of the rites of spring at the law school is graduation and our farewell to another third year class. This event is so significant in the lives of those involved that one wishes there were something profound to say. Unfortunately, or maybe fortunately, most of the profound things have already been stated. Therefore, I will settle for a few comments which are less than profound.

Needless to say, faculty and staff at the law school will experience a sense of loss when the third year class leaves. This is inherent in our jobs. Members of the class will also experience losses--including the separation from friends made while in law school, for most a permanent separation from educational institutions, and a separation from a life of "relative poverty" and the endless need to study. While the latter may not be viewed as a loss, life as a student is in many ways ideal because of the freedom, the lack of responsibility for the problems of others and the natural community of fellow students experiencing the same ups and downs of law school life. You will not be able to assess the accuracy of this until after you have experienced a few years in your career.

As an attorney you will have a unique opportunity to make a

difference for your clients, your community, your professional and social organizations, and your government at all levels. You will be expected and able to play leadership roles in areas far beyond what we would normally consider the practice of law. The reason for this is quite simple--the analytical skills you have developed in law school will serve you well in many different situations. The ability to obtain the relevant information relating to a problem, to analyze the problem and to develop solutions to a problem is important in a number of professions, jobs and situations. People who associate with you will quickly recognize those skills and, therefore, attempt to "exploit" them. Accept the challenges.

In your profession as an attorney you will face many challenges. One of the most exciting things about the profession is the very aspect of the law which drove you crazy in law school, i.e., there is rarely "black letter law" which covers the situation presented by your client and, therefore, no easy formula for solving the problems of humans. This is exciting because it avoids boredom and encourages creativity. While it is possible to limit yourself to relatively "routine" cases, relying on form books and computers, this is both dangerous and less than stimulating. Too much reliance on

forms and the work of others can stifle imagination and creativity and do a disservice to your clients.

Do not be afraid to accept the challenges of the unusual. You will find many people in your community needing the services of an attorney, but lacking the resources to pay for representation. Do not reject such cases automatically. Aside from fulfilling your professional obligation, such cases frequently present the opportunity for the most creative lawyering, in part because the solutions have not been well developed through years of representation. You will find that the satisfaction of helping someone far transcends the monetary compensation you expect to receive for your services.

I am confident that you will enjoy successful careers as attorneys. Further, I am confident that the training you received here will enable you to compete with attorneys who attended any other institution in the country. You have the skills to make whatever you choose of your profession. Best of luck and keep in touch with Valparaiso University School of Law.

*Dean Ivan E. Bodensteiner
Valparaiso University School of Law*

CONGRATULATIONS TO THE CLASS OF 1989

Kathleen Allen	Karen Crummie	Andrew Kraemer	J. Justin Murphy	Lisa Sunderman
Christine Alsop	Diane Custer	Joseph Kreoll	Timothy Murray	Pamela Swiderski
Henry Antonini	John Daerr	A. Ted Kundrat	J. Mark Niermann	Alan Targgart
Randall Arndt	Nadine Dahm	Kurt Larson	Adrian Overman	Steven Tsangaris
Richard Babcock	Martin DeVries	Mary Beth	Janice M. Parker	Thomas
Thomas Back	Timothy Eddy	Lavezzorio	Gail Parkhurst	Vander Hulst
Timothy Baker	Scott Ellis	Rebecca Lockard	Cynthia Phillips	Bruce
Timothy Balko	John Garman	Joseph Loker	Joyce Pierson	Vander Muelen
David Barker	Lisa Hancock	Michael Lopez	Peter Pogue	Timothy Vojslavek
Douglas Batt	Susan Hartman	Frederick	Vicki Rau	Jayne Walker
Philip Benson	William Hefron	Lowrance	Wanda Reed	Charles Wilber, Jr.
Patrick	Beth Henning	Sandra Mansur	Kingsley Regnier	Susan Woolley
Blankenship	Lynne Homan	Paul Marchand	Mary Ann Reisert	Jeffrey Wright
Barbara Bolling	Angela Hughes	Christine Mascal	Debra Reusze	Lisa Wyatt
Jeffrey Boulden	Jonathan Irwin	David Mathies	Paul Ritsema	Yovone Younis
Ronda Brown	Heidi Jark	Rachel Mathison	Daniel Rustmann	Julie Zandstra
Gale Carmona	Bonde Johnson	Barbara	Christian Sands	Stephen Zollman
Melissa Cohen	Robert Kentner	McConnell	Larry Sittler	
Matthew Cooper	Jeffrey Kinsler	Michael McVickar	Bradley Soos	
H. Jon Costas	James Kottaras	Daneene Mitchell	Jeffrey Sturm	

MESSAGE FROM THE PRESIDENT

A classmate of mine, who I had not seen since our 1982 graduation, just happened to stop by to see me in my office at Sears Tower in Chicago. He is from upstate New York and was in downtown Chicago for business. Knowing that I worked in the Tower, he looked up and figured he would give it the good old law school try to see if he could find me in the Sears Tower maze. Five elevators and twenty minutes later, he found me. We talked for about a half-hour or forty-five minutes. We just picked up where we had left off nine years ago. Then he was on his way to parts unknown in the suburbs. Thanks, Joe, for reminding me. To me, that's what Valpo is all about.

But there is more to what Valpo means to me. Valpo means sitting in on the University Alumni Board meeting as I did last month and listening to that group of Alumni struggling with the issues that are before them. It is always an interesting contrast to the issues that are before our law school board. One issue that affects both groups is the University's development of an alumni network. Though the development is in its early stages, it has the potential of becoming a powerful placement and recruitment network for both the University and the School of Law. In our October meeting, our Board will discuss what our role will be with this network and what unique aspects will work for the law school alumni. In the months to come, you will hear more about this development both from the law school and the University.

A second issue that the University and its alumni are struggling with is the mission statement for the University. This statement, once finalized, will manifest the strategic plan for the University over the next number of years. If you are interested in participating in this process or just contributing your two cents, I suggest you contact Professor Al Meyer at the School of Law. He serves as our representative to the University for the formation of the mission statement and the strategic plan.

One of the last issues that the University Alumni Board focused on was their alumni and faculty awards. Law school alumni and faculty are eligible to receive any of these awards. Consequently, at the law school Board meeting on April 7th, we decided to submit a recommended list of law school alumni and faculty for the University awards.

Coming back again to what Valpo means to me, Valpo also means leading our Alumni Board through its decision making process as we did on April 7th. I have already mentioned some of the decisions we made; there were others. First, we nominated an officer slate for the 1989-1990 school year. You, the alumni, will be voting on this slate at Homecoming in October. It is: John Lee, '77 -- *President*; Roger Benko, '72 -- *Vice President*; Jack Lawson, '61 -- *Secretary*; and Jerome Ezell, '79 -- *Treasurer*. Congratulations to the members of the slate. I know they look forward to approval by the membership at Homecoming.

In addition, we began nomination of alumni to fill the seven vacancies on the Board which will occur in October. These members cannot run again in that they are completing their second term. They are: Ed Brown, '51; Jackie Leimer, '81; and F.L. Dennis Logan, '77. Other Board members whose first terms expire in October and who have agreed to run again are: Roger Benko, '72; Judge Roland A. Herrmann, '57; Al Kirkland, '74; and Ed Nielsen, '73.

If you have any nominations you would like to make in either the officer or board member category, please call Don Seberger, '80, Chairman of the Nominations Committee at (312) 295-4316. We look forward to welcoming new members to the Board, and thanking those who will not return, at our law alumni homecoming dinner in October.

Speaking of which, Homecoming takes on a "Big Top" theme this fall. Some new activities are being

planned by the law school, including an October 21st dinner and dance at the Spa Restaurant in Chesterton, Indiana. More details will be forthcoming as plans fall into place. Please note that the date for Homecoming (October 20 and 21), is later than usual due to changes made by the University.

Yet another issue brought to the attention of the Board was the unique status of minority law students. Barb Bolling, a minority law student, asked the Board for alumni support with recruitment and placement of minority students. The Board decided to incorporate suggestions from Barbara and her fellow law students into our discussions in October concerning the Alumni Network.

The Board also decided to increase its funding for this illustrious publication from \$5,000 to \$6,000. Fortunately, Dean Cichowski and his able staff for the *AMICUS* have found ways to cut the astronomical costs for the *AMICUS*, but more funding from the Alumni Association will always be welcome in that we only fund approximately one-third of the costs. Other issues covered by the Board will be discussed elsewhere in this issue.

Many of you were recently asked to think about Valpo, and what it means to you, when you received letters from Board members in your area asking you to pay your dues. I am not going to ask you to do that in this article, but I will ask you to think about Valpo, to think what it meant to you, before you attended law school, and to think about what it means to you now. The School of Law has come a long way since the 1800's; so have the Alumni. Let's continue to move forward together and be proud of what we have accomplished so far and be grateful for what Valpo has done for us over the years. Thank you.

*Mary M. Squyres, President
VUSL Alumni Association*

LAW SCHOOL BRIEFS

In April, Callaghan & Company published the first annual supplement to *State and Local Government: Civil Rights Liability*, by **Dean Ivan Bodensteiner** and **Professor Rosalie Levinson**. On February 4 **Dean Bodensteiner** and **Professor Levinson** participated as panelists in the Church/State Relations Symposium sponsored by the VU School of Law Chapter of the Christian Legal Society. Also in February **Professor Levinson** spoke to the LaPorte Chapter of People-to-People International on her trip to the Soviet Union.

Dean Bodensteiner attended the meeting of the deans of ABA-accredited law schools held in conjunction with the American Bar Association's mid-year conference in Denver.

Associate Dean Bruce Berner gave his Inaugural Lecture, "The Supreme Court and the Incredible Shrinking Fourth Amendment" on March 29. For a synopsis of **Professor Berner's** presentation, see the *Faculty Focus* in this issue. **Dean Berner** has been appointed by Valparaiso Mayor David Butterfield, '71 to the Valparaiso Park and Recreation Board.

In January **Dean Berner** coordinated the 4th Annual Institute on Law and Pastoral Ministry at the Law School which was attended by over 45 pastors from around the country. This year's topic was "Healing the Family." Also speaking to the group on Church/State issues was **Professor Rosalie Levinson**.

Students **Jon Costas**, 3L, and **Bob Rigg**, 2L, placed second in the regional Giles Sutherland Rich Intellectual Property Moot Court Competition held in Chicago on March 1. They advanced to final rounds, scheduled in Washington, DC, April 12, 1989. Their faculty advisors were **Professors Geri Yonover** and **David Myers**.

Professor Geri Yonover reviewed Gabriel Garcia Marquez' book *Love in the Time of Cholera* for the Valparaiso University "Books and Coffee" Series.

Professors John Potts and **Richard Stith** filed an *Amicus Curiae* brief in the Supreme Court of the United States in support of the Appellant in the case of *Webster v. Reproductive Health Service*. **Professors Potts** and **Stith** represented the International Right to Life Federation in the brief which reviewed other nations' constitutional and legislative rulings on abortion and compared them to the *Roe v. Wade* decision.

Director of Career Services Gail Peshel co-authored an article on the placement of law graduates that appeared in the March 27, 1989, issue of the *National Law Journal*. **Mrs. Peshel** has been reappointed Co-Chair of the National Association of Law Placement Research Committee.

Public Services Librarian Tim J. Watts had an article "Preliminary Examination of the AALL's Exchange of Duplicates Program" published in volume 81, no. 2 of *Law Library Journal*.



Professor Michael Straubel

Professor Michael Straubel was chosen as chair-elect of the Section of Aviation and Space Law of the Association of American Law Schools at the AALS annual meeting in New Orleans. Also attending the AALS meeting were **Assistant Dean Curtis Cichowski**, **Professors Alfred Meyer**, **David Vandercoy**, **Paul Brietzke**, **Mary Persyn**, **Robert Blomquist**, **Warren Bracy**, **Assistant to the Dean - Admissions Katharine Wehling**, and **Director of Career Services Gail Peshel**.

Professor Straubel has submitted his LL.M. thesis entitled "United

States' Regulation of Commercial Space Activity" to McGill University. As advisor to the Jessup International Moot Court team, he coached the team to second place in the regional competition. **Professor Straubel** also competed in the United States' Trials for the World Cross Country Championships on February 4 in Seattle.

In a recent issue of *Hansa*, a literary magazine published in Kuala Lumpur, Malaysia, there appeared an article entitled "The Haiku" by **Professor Jack A. Hiller**. Six of **Professor Hiller's haiku** were also published in the issue.

Third World Legal Studies, a journal published by the School of Law and the International Third World Legal Studies Association, has published two issues this semester, "Teaching Law and Development" in January and "The Application of Law and Development Theory: Some Case Studies" in May. *TWLS* is edited by **Professors Jack Hiller** and **Paul Brietzke**. **Professor Mary Persyn** is the managing editor.

Professor Persyn is a candidate for Vice-President/President-Elect of the Ohio Regional Association of Law Libraries.

Documents Librarian Sarah Holterhoff has been named Secretary of the Federal Depository Library Council to the Public Printer for 1989-90. Her election was announced at the Spring meeting of the Council, held in Pittsburgh in March. **Mrs. Holterhoff** has also been responsible for planning two programs for the annual meeting of the Indiana Library Association in Fort Wayne in May. One is an all-day workshop entitled "Libraries ... Information Link Between Small Business and the Government." The other is a session on "CD-ROM: What It Is and How It Is Changing Government Information."

Professor David Vandercoy coached the VUSL Client Counseling Team to a second place finish in the regional competition in Chicago. Client Counseling team members were **Teresa Massa**, 1L, and **Steven**

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Whitfield, 1L. Nadine Dahm, 3L, was the Alternate, and Barbara Bolling, 3L, was the Student Advisor.

Professor Robert F. Blomquist has an article, "Supplemental Environmental Impact Statements Under NEPA: A Conceptual Synthesis and Critique of Existing Legal Approaches to Environmental and Technological Change," forthcoming in *5 Temple Environmental and Technology Journal*. He also has a paper, "Some Aspects of Statutory and Common Law Liability for Hazardous Waste," forthcoming in conference proceedings of the *Ohio Technology Transfer Organization*.

On February 11 Professor Blomquist participated in an environmental conference sponsored by a new Valparaiso University undergraduate group called Earthtones; his talk was entitled "Thinking Globally But Acting Locally: One Person Can Make a Difference." On April 6 Professor Blomquist gave a lecture entitled "Managing Environmental Complexity in the Global Village" for the Midwest Environmental Law Caucus during Law Week. On March 31 he participated in a concert at the Law School singing a number of folk songs while playing his guitar.

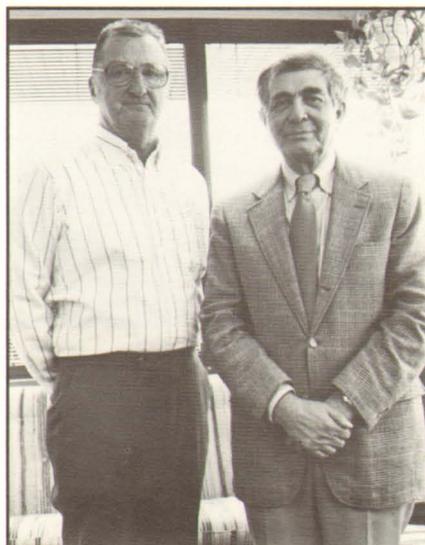
An article by Professor Paul Brietzke, "The Constitutionalization of Antitrust: Jefferson, Madison, Hamilton and Thomas C. Arthur," which appeared in *22 Valparaiso University Law Review* 275 (Winter 1988) has been recommended in the "Worth Reading" Column of the March 27, 1989 issue of *The National Law Journal*.

Mary Ann Tuytschaevers, Circulation Supervisor in the Law Library, had a poem, "The Book of Three," based on the book by L. Alexander, published on bookmarks by the Hammond Public Library. Ms. Tuytschaevers wrote the poem as part of a class on Children's Literature that she took at Indiana University-Northwest. Ms. Tuytschaevers is working on her

Master's Degree in Library Science at Indiana University.

Jill Marie Madajczk, 2L, has been awarded a 1988 Balfour Scholarship by the Court of Appeals of Phi Delta Phi Legal Fraternity. She was chosen from a field of 100 applicants.

Professor David Myers and his family have returned from Uruguay where they spent six weeks this winter. Both Professor Myers and his wife, Professor Inma Minoves-Myers, from Indiana University-Northwest, are on sabbatical this semester and working on special projects. Professor Myers has completed an article entitled "Some Observations on the Analysis of Regulatory Takings in the Rehnquist Court," to be published in volume 23, no. 3, of the *Valparaiso University Law Review*.



Professor Al Meyer (L) with Professor Emeritus Harry Pratter of the I.U.-Bloomington Law School. Professor Pratter visited the School of Law in January as a Distinguished Scholar-in-Residence. Early in his career, Professor Meyer was a colleague of Professor Pratter.

TWO PROFESSORS VISIT VU SCHOOL OF LAW FOR 1989-90

The Valparaiso University School of Law will have two visiting professors for the 1989-90 school year: Professors Gregory Ogden and Cheryl Stultz.

Professor Gregory L. Ogden from Pepperdine University School of Law will be teaching civil procedure and pre-trial skills. Professor Ogden has an A.B. from U.C.L.A., a J.D. from the University of California-Davis, and LL.M.s from Temple and Columbia. He has been a professor at Pepperdine since 1978, and was a visiting professor at Notre Dame during the 1988-89 school year. His wife is completing an advanced degree at Notre Dame. In addition to teaching law, Professor Ogden has been a consultant to the Administrative Conference of the United States.

Professor Cheryl Stultz comes to VU from the practice of law with Milton Jernigan & Associates, P.C., in Greenbelt, Maryland where she has been working in the areas of real estate and business law. She holds a B.A. from Notre Dame, and a J.D. from Catholic University. Professor Stultz will be teaching land transfer, business associations and business planning.

FORMER GARY MAYOR RICHARD HATCHER TO TEACH COURSE AT LAW SCHOOL

Richard G. Hatcher, '59, Mayor of Gary, Indiana, from 1967 to 1987, will teach a course at the law school during the fall semester 1989. Mayor Hatcher will serve as an Adjunct Professor and will teach a course on race relations and the United States Constitution.

In addition to serving as Mayor of Gary, Mayor Hatcher has been President of the United States Conference of Mayors, National Chairman of the Board of Directors

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of Operation PUSH, and President of the National Conference of Democratic Mayors and also of the National Conference of Black Mayors, and Vice-Chairman of the Democratic National Committee. During the past year Mayor Hatcher has been teaching at the John F. Kennedy School of Government at Harvard University.

SYMPOSIUM ON CHURCH/STATE RELATIONSHIPS IN THE PUBLIC SCHOOLS

The Christian Legal Society and the VU School of Law sponsored a Symposium on Church/State Relationships in the Public Schools on Saturday, February 4, 1989. The moderator for the all-day program was Judge Michael S. Kanne of the United States Court of Appeals for the Seventh Circuit. Opening remarks were made by VU President Alan F. Harre, and Professor Bruce Berner of the law school. Professor Charles Gromley of the School of Law introduced a discussion of the doctrinal issues surrounding religion in the schools. Panelists for this discussion included: Dean Ivan Bodensteiner; Professor William P. Marshall, Case Western Reserve College of Law; Professor Michael W. McConnell, University of Chicago Law School; and Attorney Larry Crain from the Rutherford Institute of Tennessee.

Curriculum in the public schools - how courses such as social sciences, history, and ethics should be taught in the public school considering the pluralistic society in which we live - was the topic for the second session of the Symposium. Professor Seymour Moskowitz of VU introduced this session. Panelists included: Professor Warren Bracy of VU; Professor Marshall; Professor Richard S. Myers, Case Western Reserve School of Law; and Attorney David Llewellyn of the Rutherford Institute of California.

The third session, introduced by Dean Bodensteiner, considered the question of religious free speech by

students in public schools - what are the free speech rights of students? The panelists for this discussion included: Professor Rosalie Levinson of the Law School; Professor McConnell; and Attorneys Crain and Llewellyn.

Funding for the Symposium was provided by the University, the School of Law, the Student Bar Association, and the VU Alumni Association.



(L-R) Professor Al Meyer, Dean Ivan Bodensteiner and Professor William Twining. Professor Twining, of the University of London Faculty of Law, delivered the sixth annual Edward A. Seegers Lecture at Wesemann Hall on April 12 & 13. A full article, based on his lecture "Reading Law", will be published in an upcoming issue of the Valparaiso University Law Review.

VALPARAISO ADOPTS PRO BONO REQUIREMENT

Effective with the entering class of 1989, the School of Law has adopted a *pro bono* requirement for graduation. The primary purpose of this program is to introduce law students to the public service requirement of the profession and sensitize law students to the needs and problems of the under-represented in our society. As side benefits, students will obtain practical experience and contacts in the legal community, attorneys will receive assistance in fulfilling their public

service requirements and the availability of legal representation may be expanded.

The role of law schools in this area was recently emphasized by the Council of the ABA Section of Legal Education and Admissions to the Bar, which adopted the following policy:

Law schools should make law students aware of the special needs of those persons often under-represented in legal matters, including minorities, the poor, elderly and handicapped members of society, facilitate student services to these groups and should install a sense in their students of the profession's obligation to provide legal services to those who are unable to afford them.

To our knowledge, only one other law school in the country has a *pro bono* requirement.

To fulfill this graduation requirement, each student must complete 20 hours of *pro bono* service under the supervision of an attorney. The student has from the end of the second year of law study until the last day of classes before graduation to meet the requirement. The program is not connected to the School of Law Clinical program and students will not receive course credit or a grade for their activities. Instead, it is an additional requirement for graduation and both the student and supervising attorney must certify the completion of 20 hours of service.

The program will involve a number of practicing attorneys from a number of differing types of law practice. It is not an "in-house" program; rather, students will be placed with practicing lawyers who volunteer to participate in the program.

While it is difficult to define *pro bono* service, the requirement can be satisfied by assisting attorneys representing governmental agencies, indigents, or non-profit organizations without compensation or at a

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reduced fee. Assisting judges as "law clerks" would also satisfy the requirement. In general, the intent is to make students available to assist attorneys in the types of representation contemplated by Rule 6.1 of the Indiana Rules of Professional Conduct, which states:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by serving in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

The School of Law has already received a large number of positive responses to a request of law firms and agencies to participate in the program. If you are willing to participate, please contact the Office of the Dean at (219) 465-7834.

ALUMNI RESPOND TO DEAN'S ANNUAL GIVING CAMPAIGN

This past year was only the third year for the Dean's Annual Giving Campaign; the sole financial advancement program for the general support of the varied programs of the School of Law. While the law building campaign remains a viable program for the capital expenses associated with the construction of the new Wesemann Hall, the Dean's Annual Giving Campaign is designed to promote the support of non-capital expenses and operations.

So far this year, there have been over 130 responses to the Campaign from 39 different graduating classes.

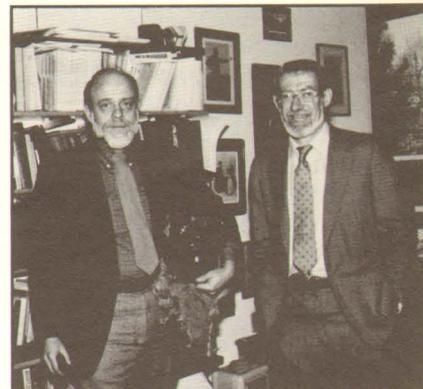
The total received is just over \$17,000. While this may not seem like much, it represents a 30% increase over last year's result. More importantly, there was an increase in the number of participants.

We have experienced an increase in participation in each of the three years the Campaign has existed; but we have a long way to "grow."

This is a critical program for the School of Law, as all monies received go directly to the law school and are immediately applied to the law school program designated by the donor. Beneficiaries of this years campaign included student scholarships, library acquisitions, faculty development, and co-curricular programs, to name but a few.

The tuition for the 1989-1990 school year has been set at \$8,990. Obviously, it is imperative that everything be done to keep the tuition charge as low as possible. But, at the same time, there is a constant need to enhance and improve resources and programs. While the School of Law has made incredible improvements over the last several years, these improvements require an increase in financial support. Funds raised through the Dean's Campaign provide the critical difference between what we charge for a legal education (tuition) and what it actually costs to provide that education.

Responses to the Campaign are still coming in. If you have not yet responded, please consider doing so. If you have any questions, please contact Dean Curtis Cichowski through the School of Law Development Office at (219) 465-7849.



(L-R) Professor Paul Brietzke and Distinguished Scholar-in-Residence Professor Peter Irons, of the University of California - San Diego. While visiting the School of Law, Professor Irons delivered a lecture entitled "Making Law: The Case for an Active Judiciary."

1989-1990 LAW REVIEW BOARD

Congratulations to the following students who have been named to the Editorial Board of the *Valparaiso University Law Review* for the upcoming academic year:

Editor in Chief: David Welter

Executive Editor of Publication: Julie Ezell

Executive Managing Editor: David Clark

Executive Editor of Student Writing: Curt Rympha

Articles Editors: Mark VandenBosch, Rob Dassow, Susan Brietzke, Craig Bunce, Scott Reno, Dean Panos

Note Editors: Carolyn Trier, Dennis Goss, Sam Brooks, Susan Castner, Dominic Polizzotto

LAW WEEK 1989

by Allison Hirsch, 1L

Waltzing to the tunes of Dick Kress and the Big Band highlighted the array of activities that took place during Law Week 1989.

Law Week opened, unofficially, on Tuesday, April 4, with a showing of the film, "The Verdict," which was based on the novel written by the Law Day Luncheon speaker, Barry Reed. Also on Tuesday, Eric Hershberg spoke on the "Human Rights Crisis in Central America." His speech was sponsored by the International Law Society.

The annual Law Day luncheon officially marked the beginning of Law Week. The luncheon was held at the Porter County Expo Center on Wednesday, April 5, and over 150 students, faculty, administrative staff and community representatives attended the event.



Luncheon Speaker Barry Reed

(photo by Ann Lederer, 1L)

After lunch was served, Kevin Speer, President of the Student Bar Association and the Law Week Chair, made his opening remarks and introduced Dean Ivan Bodensteiner, who presented awards to students for scholastic achievements and involvement in the various co-curricular programs.

Community representatives were also present to honor students who excelled in various areas of the law. Mr. John Lee presented the Law Alumni and the American Corporate Counsel Association Award to 3L Tim Vojslavek and graduate Kim Wilkins for their achievement in Professor Brockington's Business Associations course.

Mr. Charles Vaughan, Jr. presented the Vaughan Awards to those students who excelled in Trial Advocacy. Recipients of the award were 3Ls Tim Baker, Melissa Cohen, Nadine Dahm, Jeffrey Kinsler, Ken Wilber and graduate Larry Thrall. Mr. David Hollenbeck of the Northwest Indiana Chapter of the Federal Bar Association

presented the Federal Bar Association award to 3L Sue Hartman in recognition of her outstanding work in the Federal Practice course, and Attorney Larry Evans presented plaques bearing the inscription of the "Ten Commandments for Lawyers" to 3Ls P.S. Marchand and Julie Zandstra for their exceptional work in the Legal Profession course.

The guest speaker for the Luncheon was Mr. Barry Reed, attorney and author of "The Verdict." His novel was the basis for the Oscar-nominated film starring Paul Newman. Reed explained that he was able to write the novel after many years of experience as an attorney specializing in professional liability and medical malpractice in Boston, Massachusetts. He said that he was well acquainted with the dramatics surrounding the medical arena, which led to his success with the book and film. As a result, "the characters in the book and film were based upon people with whom I had actually dealt," Reed commented.

Reed remarked that "there's a book within everyone waiting to be written, since life is full of occurrences that most people couldn't dream about."

He also discussed the complexities involved in bringing a medical malpractice suit to trial, and in particular, the difficulties associated with gathering expert testimony since "doctors are very unwilling to testify against each other."

The annual "roast" was held at the Porter County Expo Center on Thursday, April 6. This year's "roastee" was Dean Ivan Bodensteiner. As over 200 students, faculty and administrative staff were provided with complimentary beverages and snacks, host Professor Al Meyer, with banjo in hand, introduced the roasters. Professors Charles Gromley, and Robert Blomquist, Associate Dean Bruce Berner, Career Services Director Gail Peshel, Dean's Administrative Assistant Mary Moore, the Dean's wife, Pat Bodensteiner, and 3Ls Tim Baker and Julie Ezell provided kind words and song in honor of the Dean.

To the cheers of the crowd, Dean Berner played the piano in a duet with Professor Meyer, along with audience participation. Julie Ezell displayed a poster calendar which bore the Dean's resemblance on each month's cover model. Mrs. Peshel also presented a gift to the Dean, a graduate of the Notre Dame Law School, a T-shirt that noted the score of the Valparaiso basketball team's victory over Notre Dame this past season.

Following the formal roast, door prizes were awarded, and the open microphone portion of the evening began with a 3L band featuring Paul Ritsema, Jon Costas and his brother Jay, Tim

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Baker and Bonde Johnson. Two of the band's hits included "Go Ask Nancy (Alice)" and "Law Review," sung to the tune of the Beatles' "Yesterday." Ritsema also revived Elvis' farewell Hawaiian tour in full costume with a rousing chorus of "Heartbreak Hotel."



Elvis, 3L, at the Roast
(photo by Doug LaLone, 1L)

After the famous slide show, organized by 3Ls Rachel Mathison and Rebecca Lockard, Heidi "Three Elle" Jark displayed the latest in fashions with the help of "models" Mark Niermann, Tim Baker, Peter Pogue, John Irwin, Mike McVickar, and Kevin Speer. Professor Blomquist provided a musical interlude on guitar and 3L Bill Hefron designated awards of his own to various professors.

A second 3L band, featuring Tim Vojslavek, Pat Blankenship, and alums Tom Hyatt and George Grenopolis concluded the evening's live entertainment. Afterwards, the evening turned to dancing to the tunes provided by DJ "Entertainment Express."

Earlier on Thursday, Professor Robert Blomquist spoke on "Managing Environmental Complexity in the Global Village" at a lecture sponsored by the Midwest Environmental Law Caucus, as part of Law Week.



The Alumni Barbeque (photo by Doug LaLone, 1L)

On Friday, April 8, following their Board of Director's meeting, the Law School's Alumni Association sponsored a complimentary barbeque in the Wesemann Atrium. Over 70 hungry law students, faculty, and staff attended the afternoon feast.

The capstone for the week was the lavish Barrister's Ball, which was held on Saturday, April 8. As the 300 guests made their entrances displaying the finest in formal evening attire at the Holiday Star Theatre in Merrillville, 2L Peter Richert charmed the crowd on his viola, followed by Mark Niermann's musical ingenuity on the grand piano. The guests were also welcomed by Kevin Speer and his Law Week committee members, and cocktails and hors d'oeuvres were available for the arriving crowd.

After dinner, Speer presented the outgoing SBA officers with plaques and introduced the new Executive Board. The recently elected officers are President, Jocelyn Murphy, 2L; Vice-President, Allison Hirsch, 1L; Treasurer Allen Fore, 1L; and Secretary, Kim Tabor, 2L.



Paul ('89) and Krista ('92) Ritsema at the Barristers' Ball
(photo by Doug LaLone, 1L)

Following the program, the guests danced to the music of Dick Kress and the Big Band, and during the Band's intermissions, "Entertainment Express" was again present to provide continuous entertainment.

Kevin Speer truly deserves many kudos for all of the time and effort he devoted to planning a very success and memorable Law Week.

YEAR IN REVIEW

by Gail Peshel, Director of Career Services & Alumni Relations

As the first class which has spent all three years in the new law building graduates, it seems an appropriate time to reflect on the special offerings at the School of Law and the new traditions which have begun.

The ample space within the new law building has afforded the faculty and staff an opportunity to offer greatly expanded services to the local bar and, of course, the law students. Regarding the law school "family," several new traditions have been developed based simply on a mixture of home cooking and camaraderie. In addition to open receptions held after lectures, this year the faculty and staff broke bread with students by offering a school-wide Thanksgiving dinner, a Christmas party, and a Chinese New Year celebration.

The tradition of a school Thanksgiving dinner actually began last year when the administration became aware that many students were electing to study for finals instead of traveling to a family Thanksgiving celebration. Therefore, the faculty and staff decided to bring the celebration to the school. The event was so successful last year, we decided to do it again this year. Preparing a meal for one-third of the student population is no easy task. Over eighty pounds of turkey were roasted. Fifty pounds of potatoes were peeled, cooked and mashed. Bowls of stuffing and gravy were made by "master chefs." Other faculty and staff members brought salads, vegetables and pies.

A Christmas party was held on a Sunday night during finals, in an attempt to temporarily lighten the mood of diligent law students. Faculty and staff formed a "robed choir," sang a few traditional Christmas songs, urged students to join in, and shared wassail, hot chocolate and cookies.



The "robed" choir. (photo courtesy of Adam Holterhoff)

In honor of the Chinese new year, our law students from China, Ting Fu Gu and Yin Wang, with assistance from the faculty and staff, prepared an authentic Chinese

luncheon for approximately one-half of the law school community. "Gong Xi Fa Cai" (wish you would make a good fortune in the new year) was heard throughout the halls.



(L-R) Ting Fu Gu, 2L, VU President Alan Harre, and Yin Wang, 1L.

The various organizations have been very busy this year as well. Symposiums and lectures have been held throughout the year. For example, the Midwest Environmental Law Caucus sponsored a trip to Pinhook Bog -- a natural wonder in Northern Indiana which is reminiscent of the bogs in Scotland.



Pinhook Bog

This year the School of Law hosted the regional negotiation competition of the American Bar Association/Law Student Division. As in years past, the Indiana Supreme Court and the Court of Appeals heard arguments at the law school.

The law school was not exempt from campaign slogans this year. Campaign buttons and posters were plentiful both last fall and this spring. Debates over credentials of, and area visits by, candidates vying for positions in the

YEAR IN REVIEW

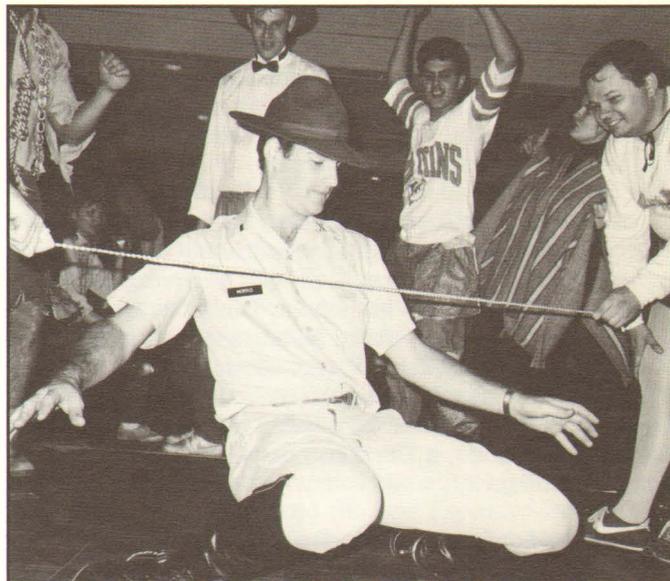
national election were equalled by zealous campaign stumping done by law students for officer positions in the Student Bar Association.



All three law fraternities continue to be active at Valparaiso. Each has hosted its share of lectures and gatherings. SBA parties continue to be very popular; the SBA co-hosted the fifth annual flush party (price of admission: one rejection letter) for students in March. Awards were given for categories of flush letters such as the "most humorous," "most obviously word processed," "shortest," "longest," and "the most received," to name a few.



The SBA Halloween Party: a "hair raising" experience!



Of course, VUSL students are never in "limbo" very long.

Thanks to the Fine Arts Committee, an art exhibit usually can be viewed in the Duesenberg Commons area of the law school. A second-year law student, Anita K. Gordon, held a watercolor exhibit entitled "Walk Through the Woods," January 21 - March 3, 1989. Anita is a graduate of the American Academy of Art in Chicago and holds a Bachelor of Science in Fine Arts degree from Valparaiso.



"Mo's Place" by Anita Gordon.

YEAR IN REVIEW

On March 31, the Fine Arts Committee also coordinated an afternoon Tea and Musicales. This event showcased talented students and faculty who performed works by their favorite artists.



Mike McVickar, 3L, on French Horn, accompanied by Mark Niermann, 3L.

All the events which were held over the past year cannot be included. A few which must be mentioned are: Associate Dean/Professor Bruce Berner's inaugural lecture (see the Faculty Focus section of this issue); two Distinguished Scholars-in-Residence: Professor Peter Irons from the University of California-San Diego, and Professor Emeritus Harry Pratter from Indiana University School of Law-Bloomington; the sixth annual Edward A. Seegers



In order to accommodate the overflow crowd for The Monsanto Lecture, a closed circuit broadcast of the lecture to the Duesenberg Commons is necessary.

Lecturer - Professor William Twining of the University of London Faculty of Law; the fourth annual Law and Pastoral Ministry Program; and the third annual Monsanto lecturer - Professor Ernest Weinrib, a member of the faculty of law at the University of Toronto.

It has been one of the busiest years in the history of the School of Law. New student organizations have been created to deal with issues such as assisting the homeless in the area. Many of the student organizations have put on very impressive symposia, such as the Symposium on Church/State Relationships in the Public Schools, hosted by the VUSL Christian Legal Society.

Of course, the new Wesemann Hall has also made it possible to provide expanded service to the local bar. VUSL continues to offer continuing legal education programs on a weekly basis, in conjunction with the Indiana Continuing Legal Education Foundation. Live CLE programs have also been provided. This year, the School of Law sponsored four live programs, including a program on estate planning (co-sponsored with Gainer Bank), a program on fair housing and fair lending issues (co-sponsored with the U.S. Department of Housing and Urban Development), and a program for legal services attorneys (co-sponsored with the Indiana Legal Services Support Center).

It has, in all respects, been a great year.

STUDENT BAR ASSOCIATION OFFICERS FOR 1989-1990

President: Jocelyn Murphy
Vice President: Allison Hirsch
Treasurer: Allen Fore
Secretary: Kim Tabor
ABA/LSD Representative:
Steve Cox
Faculty Representatives:
Helen Thornton, 3L
Mary LaSata, 2L
Third-Year Representatives:
Craig Bunce
Tony Makin
Second-Year Representatives:
Donna McCoy
Scott Minnette
Chuck Timmerwilke

NEWLY ENDOWED PROGRAMS

MONSANTO ENDOWS TORT LAW LECTURE

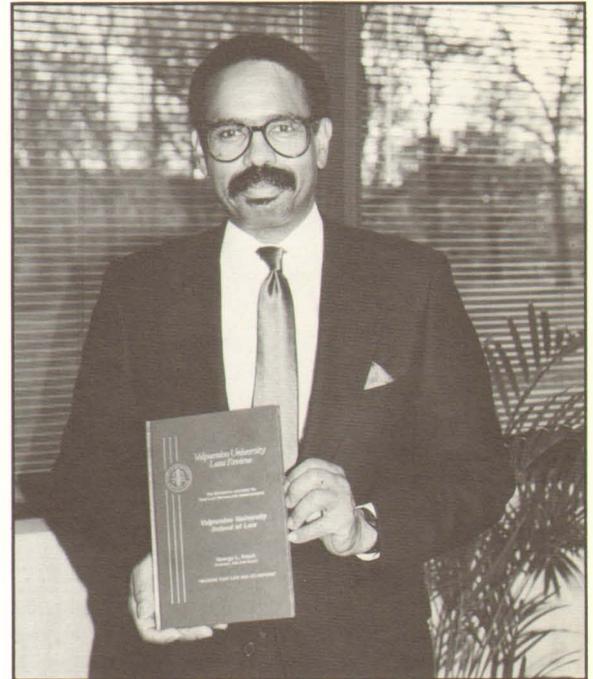
Richard W. Duesenberg, '51, '53JD, announced at a meeting of the University's Board of Directors in Chicago on January 27, 1989, that the Monsanto Fund has granted the School of Law an additional \$200,000 for the Monsanto Lectures on Tort Law Reform. The Fund had previously granted \$150,000 to the School of Law for these lectures.

"The purpose of this additional grant," Duesenberg said, "is to make financially secure the continuance of these highly successful lectures. The lectures and articles based on them will, as observed by the most recent presenter, Professor Ernest J. Weinrib of the University of Toronto, 'become eagerly awaited events for the very large community of lawyers and academics who are concerned about the future of tort law.'"

The lectures have become a major event at the School of Law. The inaugural presentation was given in the fall of 1986 by Professor George Priest of the Yale Law School. The 1987 speaker was Professor Robert L. Rabin of the Stanford University School of Law.

Each lecturer is expected to make a presentation to the entire law school family, followed by a day or two of meetings with students, individually and in classes, and faculty. The speech is then expanded into an article that is published in the *Valparaiso University Law Review* and distributed to all English speaking law school libraries around the world, and to many selected court libraries.

Duesenberg told the VU Board that the acceptance and support of the lectures by the School of Law has been more than could be asked for. An overflow crowd in the largest lecture hall required the use of closed circuit television for viewing in the Commons at the November, 1988 presentation.



Dr. John L. Mason, President of the Monsanto Fund, with a reprint of the first Monsanto Lecture.

The University and the School of Law deeply appreciate the generosity of the Monsanto Fund in underwriting these scholarly events. The Monsanto Fund is the charitable arm of the Monsanto Company, an 8.5 billion dollar international chemical and pharmaceutical company headquartered in St. Louis, Missouri. Richard Duesenberg is Senior Vice President of Monsanto, and has been its General Counsel and Secretary since 1977.

THE JUDGE LUTHER M. SWYGERT MEMORIAL MOOT COURT COMPETITION

In memory of the late Judge Luther M. Swygert, Mrs. Gertrude (Geri) Swygert, his wife, and Michael I. Swygert '67, his son, have established an endowment at the School of Law for the creation of the Judge Luther M. Swygert Memorial Moot Court Competition.

A 1927 graduate of the Notre Dame Law School, Luther M. Swygert became an Assistant United States Attorney for the Northern District of Indiana in 1934. President Franklin D. Roosevelt nominated him District Judge for the Northern District of Indiana in 1943. He was the first Democrat to be appointed to the federal bench from Indiana since the Civil War. He served as chief district judge until 1961, when President John F. Kennedy nominated him to the United States Court of Appeals for the Seventh Circuit. Judge Swygert served as the Seventh

Circuit's chief judge from 1970 to 1975. He became senior circuit judge in July, 1981, but continued to serve the Seventh Circuit as well as other courts of appeals until he became ill in 1987.

Judge Swygert served on a number of committees of the Judicial Conference of the United States, including: the Committee on Uniform Admissions to District Courts and Courts of Appeals, the Committee to Study and Consider the Problem of Venue and Jurisdiction of the District Courts, the Committee on the Revision of the Laws, the Committee on Habeas Corpus and the Subcommittee on Federal Jurisdiction. He was elected to the Judicial Conference as the Seventh Circuit's District Judge Representative in 1961 and also served as Circuit Chief Judge Representative from 1970 - 1975.

NEWLY ENDOWED PROGRAMS

On May 6, 1988, the United States Court of Appeals for the Seventh Circuit convened in a special *en banc* session together with Circuit Justice John Paul Stevens for the purpose of paying tribute to Judge Swygert. Chief Judge William J. Bauer opened the proceedings. His remarks included the following:

When I came on this Court, the chief was Luther Swygert. I never met a nicer man. His contributions to his country in terms of what he did on behalf of the Justice Department, what he did as a prosecutor, what he did as a lawyer, as a district court judge, and what he did for this court are absolutely unbelievable.

His influence on generations of lawyers and judges is unbelievable, strong, and good. He was a kind, decent man, a great judge. We, on this Court, sorely miss him. I am sure the lawyers and litigants sorely miss him, too, and we will continue to miss him for a long, long time; but thank God we had him with us for a long, long time. We are saying good-bye to him with true, deep regret.

Supreme Court Justice John Paul Stevens, Circuit Justice for the Seventh Circuit, also delivered a message in memory of Luther Swygert. The following were included in his remarks:

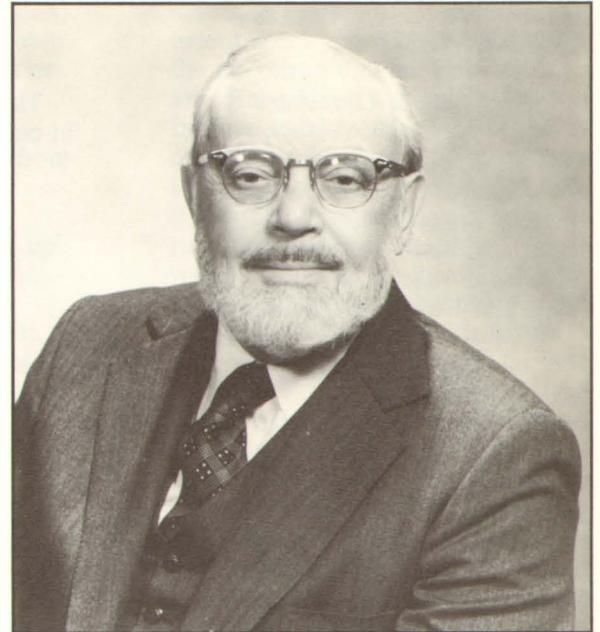
Judge Swygert was an excellent judge. He was intelligent, he was fair, he did his homework, he was courteous to litigants, and he wrote with a simple and straightforward style.

Luther was, I believe, a happy man. Surely he had the ability to make others a bit happier in various ways by such means as a perfect impersonation of the jolly old elf at Court Christmas parties, to which children as well as adults were always invited.

The last occasion on which I shook hands with Luther was just a few months ago here in Chicago. His physical condition was not good. He frankly acknowledged that he was uncomfortable, but he was as alert and friendly as the day I met him. Moreover, and this I shall always remember, he still had that special twinkle in his eye.

Chief Judge Bauer concluded the tribute by stating:

You know, this is the freest nation in the history of the world, and as long as there are judges like Luther Swygert, we will remain that free. He knew as we know that the Constitution of the United States and all the laws passed to protect us are not self-executing. It takes courageous men and courageous women, courageous judges to put them into effect. One last thing. The measure of our sorrow over anyone's loss is the measure of the depth of our love. We are, indeed, sorrowful, because we did love him.



The Honorable Luther M. Swygert

According to Michael Swygert, Luther had a special fondness for the Valparaiso University School of Law. He had received an honorary doctor of law degree from Valparaiso University during the dedication ceremony for the first Wesemann Hall School of Law in 1963. He was the first Jurist-in-Residence at the School of Law, and in 1984 taught an innovative seminar at the law school entitled "Language and the Law."

Throughout his years as a federal jurist, Judge Swygert maintained a special interest in legal education. In particular, he took an interest in moot court programs; acting as judge for student moot court competitions at Valparaiso, Syracuse, Notre Dame, Indiana University, New York University, Wisconsin, Illinois, DePaul, Northwestern, Chicago and Yale law schools. In light of this special interest of Judge Swygert's, the Judge Luther M. Swygert Memorial Moot Court Competition has been created as a means of perpetuating his memory in an appropriate fashion that he would have approved.

The program involves an annual law student moot court competition to be held in the School of Law. The competition is designed to include judges from the Seventh Circuit as final round judges, and will offer a cash award to the team of advocates adjudged to exhibit the best skills in the annual competition.

The School of Law benefited greatly from the relationship with Judge Luther M. Swygert, and is blessed by this generous opportunity to honor this great man.

FACULTY FOCUS

THE SUPREME COURT AND THE INCREDIBLE SHRINKING FOURTH AMENDMENT

by Professor Bruce G. Berner

The following is an abridged version of the Inaugural Lecture delivered by Professor Bruce Berner. An in-depth article, based on the lecture, will be published in volume 24 of the Valparaiso University Law Review.

INTRODUCTION

The fourth amendment to the U.S. Constitution poses two substantive questions about governmental searching. The first, "What is a search?", might be called the amendment's "reach" and could be restated, "What general type of governmental activity is this amendment interested in scrutinizing and regulating?" The second and logically subsequent question--"Which searches are unreasonable?"--might be termed the amendment's "grasp" and could be restated: "From this universe of 'searches', which are permitted and which prohibited?" It is, after all, only "unreasonable" searches that the constitution prohibits.

The fourth-amendment "reach" cases are today in wild disarray and the subject of widespread attack. The thesis of today's lecture is that the disarray, while it is particularly notorious because of recent decisions, springs from the fact that the Supreme Court has *never* formulated a coherent test for "reach." It has, instead, historically confused the "reach" and "grasp" problems. While this confusion *has* generated decisions which are profoundly odd, it has done far worse--it has assured that many potential governmental abuses *cannot*, without starting from scratch on the "reach" formulation, be correctly decided absent legislative intervention. While commentators for the most part agree (and I do too) that the Supreme Court is answering the question wrong, I argue in this lecture that the problem is deeper--the Court is answering the wrong question.

A. The Current Reach Formulation

1. Description

The fourth amendment provides, in pertinent part:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated;

(There is a second clause about warrants and probable cause, but it has nothing to do with "reach" and at the "grasp" level is wholly subservient to the cited clause.) Prior to 1967, this cited language prompted the Court to apply two tests for reach. One focused on *place* and one on *governmental activity*. The Court required that *both* hurdles be jumped before it would address the reasonableness question. The first hurdle--"Does the case involve a *place* the fourth amendment is concerned with?"--is typified by *Hester v. United States*, a case which held that any amount of governmental seeking in an "open field," property of the defendant outside the house's protection, could not be a "search." The second hurdle--"Did the police engage in the type of activity that the amendment means to scrutinize?"--is typified by *Olmstead v. United States*, which held that police eavesdropping from one hotel room to the next with a detectaphone (a device that does not physically penetrate the wall) was not a search because it entailed no physical *trespass*. Thus, until 1967, there was no fourth-amendment debate until the police *trespassed* into a relatively short list of "*protected places*."

In *United States v. Katz* (1967) the polestar "reach" case, defendant was making a phone call from a glass-enclosed public pay telephone. Federal police attached an electronic device to the top of the booth and recorded the conversation which became evidence in Katz's trial under federal gambling laws. The Court rejected both halves of its old "reach" doctrine. First, as to *place*, it rejected "persons, houses, papers and

effects" as being an exclusive list of protected places and treated those words as merely evocative of places where the privacy interest is most keenly felt. It broadened the "place" part of reach to all places where a person has an "actual and reasonable expectation of privacy." The *Katz* expansion of constitutional protection fits nicely with other decisions of the liberal Warren Court, in full sail by 1967. Having formulated this "reasonable-expectation-of-privacy" test, the Court then held it reasonable to expect that private phone conversations, even when made in a public phone booth, are not being surreptitiously recorded. As to the *police activity* side, the Court stated that, given the state of technology, one need not identify a trespass to find a search. What did the Court replace *trespass* with? Nothing. The idea of measuring "reach" by looking at the police and their activities *dropped out of the analysis* for all practical purposes. The whole question regarding "reach" now focuses on *place*. Which places? All places in which a person entertains a "reasonable expectation of privacy." This focus is on the citizen--not on the government. But, as I hope to demonstrate, taking one's eyes off the government when doing fourth-amendment jurisprudence is a dangerous game.

The opportunity the Court missed in *Katz* occurred immediately after it held that "persons, houses, papers and effects" was not an exclusive list of protected places but rather that privacy interests may exist in countless places and contexts. Once it said that, the Court could have noticed that it was now analyzing the Constitutional text as if it read:

The right of the people to be secure against unreasonable searches and seizures shall not be violated;

All that would have remained, therefore, would be to define what "search" meant in terms of *governmental activity*. Instead, the Court, loathe to remove all place limitation, reworked the *place* side with a vaguer but self-consciously

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broader formulation--all places where there is a "reasonable expectation of privacy." But why limit fourth-amendment protection to *any* place, however broadly defined? Why not say that such protection goes with all people to all places at all times?

I must concede that a public street affords less privacy than a home. But privacy *in general* is not the fourth amendment's concern. Its concern is freedom from unreasonable searches and seizures, a freedom which is not sensibly circumscribed by time or place. A policeman can, to be sure, properly observe a great deal about us when we are in a public place. This is not, however, because the fourth amendment should not apply in a public place, but because his observations in public places are much less likely to be unreasonable.

2. Testing

[Editors note: At this point, the formulation is tested against ten fact situations - some are decided cases, some hypotheticals.]

3. Evaluation

The "reasonable expectation of privacy" formulation is, I believe, the wrong question to be asking wholly apart from the matter of whether or not the Court is doing a good job of answering it. (It isn't.) The Court is forced by this formulation into one of two unpleasant postures, and cases demonstrate it has adopted both: *either* it must simply conclude by *tour de force* that given expectations are unreasonable or it must offer logical support. Let us examine some of the justifications the Court has offered.

a. The Analogy to Private Citizens

The Court, as we have seen in the last section, often invokes images of the general public, the "curious passerby," the flying public, or a surrogate for the public (neighbors, for example) to find expectations of privacy unreasonable. It is interesting to note how this analogy comes and goes in the cases. Sometimes we hear about these folks

and sometimes we do not; often the reason we do not is that these folks, should they do what the police have done, would be committing torts or crimes. Of course the curious passerby may glance, even purposefully look, into a house from the sidewalk. But if he begins walking through "open fields," looking in buildings, and digging up the earth, he will need a good lawyer. He could fly over your property, but if he stakes you out with binoculars and startrons, he might be liable in tort for "invasion of privacy" or "outrage" and prosecutable criminally under Peeping-Tom Statutes.

When doing constitutional jurisprudence, references to the legality or illegality of actions of private citizens are usually beside the point. Tort law and criminal law, among others, restrain private action. The Constitution restrains state action. This latter restraint is sometimes more than the former, sometimes less. If a policeman breaks into a house and seizes drugs, this is a search and seizure testable under the fourth amendment. If a private citizen were to do the same thing, he would commit burglary and theft. The fact that a private citizen may or may not lawfully engage in a given action is neither necessary nor sufficient to conclude that a policeman may or may not do that same act for a governmental purpose.

b. The "intimate activities" argument

In its decision in *Riley* (a case in which the police hovered over the defendant's back yard in a helicopter to look into a greenhouse that was not visible from street level, and identified marijuana from a height of 400 feet), the Court notes: "As far as this record reveals, no intimate details connected with the use of the home or curtilage were observed...." The Pennsylvania startron case (in which the police staked out defendant's third-floor apartment from an apartment across the street for nine days, and who, with the aid of binoculars and a startron [an infrared device which enhances capacity to see into low light areas],

witnessed persons other than the defendant engage in sexual activity) indeed seems to turn not on what the policeman did, but on *what he saw*. But with all due respect, how can one sensibly judge whether or not activity is a search by reference to what is observed? If police break into your house and find nothing, have they not been searching? Have you not suffered the intrusion? This kind of retrospective reasoning is like saying that all events which *happen* were perforce "foreseeable." Or even "inevitable." I cannot imagine how a person's right to privacy can, without compromising the very *idea* of privacy, be rationally made to turn on what he does with it. The fourth amendment prohibits unreasonable searches and seizures not because they may yield results but because, regardless of their yield, they are improper intrusions.

c. The Policeman's Location

Because the *Katz* question is framed in terms of the expectations of the homeowner to be free from outside intrusion, the focus of the recent cases is, as we have seen, on where the policeman *is located* rather than on what he sees (or hears, etc.) *into*. Note the irony: the "reasonable expectation" rubric, an approach by which the Warren Court self-consciously selected the "protected-place" rather than the "police-activity" perspective, ends up under the Burger-Rehnquist courts concentrating on where the policeman *is physically located* rather than on what place he *intrudes upon*! To the extent the Court now focuses on where a policeman "has a right to be" and not on what he has a "right to view," something akin to the old trespass requirement is back with a vengeance--the policeman needs only to justify his *location*, which is often outside any protected area. And today, of course, there are considerably more tools to intrude on people's privacy without physically trespassing into "protected areas."

B. A Proposed Reach Formulation

1. Description

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The pre-*Katz* notion that "reach" was a function of two perspectives--place and kind of activity--was attacked head on by Professor Anthony Amsterdam. Referring to *Katz*, he stated:

If the word "intrusion" is used, as "violated" plainly was, to mean only that interests protected have been defeated by the "Government's activities," I have no quarrel with it. The problem with the word lies in its subtle suggestion that a particular kind or sort of government activity, labeled an "intrusion," is necessary to trigger the fourth amendment. But this, in my view, was precisely the approach to fourth amendment coverage that *Katz* decisively rejected.

My argument is that this is precisely the approach that *Katz* decisively missed. Professor Amsterdam continued:

The entire thrust of the opinion is that it is needless to ask successively whether an individual has the kind of interest that the fourth amendment protects *and* whether that interest is invaded by a kind of governmental activity characterizable by its attributes as a "search." Rather, a "search" is anything that invades interests protected by the amendment.

I agree with Professor Amsterdam that there should be one test for "reach," not two, but I suggest that the Court in *Katz* chose the wrong one. If we follow Professor Amsterdam's suggestion that a search is "anything that invades interests protected by the [fourth] amendment," we must next identify those interests. If we attempt to define them broadly as "privacy, security, liberty," the definition includes many interests protected by other constitutional guarantees, by statutes, by common law, and some interests not protected at all. "Privacy"--what Justice Brandeis

called "the most comprehensive . . . and the most valued by civilized men," the "right to be let alone"--is a constellation of interests protected, in its various forms, by the first amendment provisions dealing with association and religion, the third amendment on troop quartering, the fifth-amendment privilege against self-incrimination, and the ninth amendment retained-rights clause, not to mention those privacy-centered interests, like birth-control information, which have been found "emanating" and/or "penumbrating" from the Constitution's text. By the time we cull out these other aspects of privacy, the "interest" underlying the fourth amendment is to be free from uninvited governmental intrusions. The fourth amendment "interest" is, in short, to be free from *unreasonable searches and seizures*. If we then turn around and define a "search" as "anything which defeats this interest," we could be indicted on suspicion of felonious question-begging.

Rather than define the activity *in terms of the interest* (a search is anything that intrudes on a reasonable expectation of privacy) or the interest *in terms of activity* (the fourth amendment protects those places we want free from intrusion), I propose that we define the governmental activity *in its own terms*--that we take the word "search" to mean what it means. Pretty radical. My test for "reach" is as follows: *to search is physically to seek through any of the senses for a governmental purpose*, including, of course, crime detection.

I anticipate the following general objection to my proposal that "search" be defined as "any physical seeking for a governmental purpose": "That is entirely too broad. Everything a policeman does is searching under this definition." Well, not everything. But, truth is, police do a lot of searching. It is a large part of the job. However, it cannot be persuasively argued that because activity happens routinely, the Constitution ought take no note of it--indeed, it ought to be *especially* interested in it. And, of course, most of these searches are

reasonable. The fourth amendment will "reach" them, but it will not "grasp" them. When they become unreasonable, however, the fourth amendment will be there to strike them down.

And, at bottom, what has happened, I think, is this. (I trust you will grant me a short, political digression.) Using the *Riley* helicopter case as an example, the Court, from a reading of the entire record, concluded that, under the circumstances (including the anonymous tip), the police acted properly to detect a suspected crime. The Court was, therefore, comfortable affirming *Riley's* conviction. But it took this comfort born of a judgment about the conduct's "reasonableness" and translated it--because the "reach" doctrine is so tractable to this--into a finding that the police were "not searching."

But what of those cases looming out there when the Court *does not* think the police have acted properly? The Court will want the Constitution to "grasp" these cases but its "reach" will be too short.

2. Testing

[Editors note: the proposed formulation is, at this point, applied to the same ten fact situations.]

3. Evaluation

The proposed "reach" formulation produces, I think, demonstrably better, more sensible, results in the tested cases. Its focus is on the police, not the vague "expectations" of the average citizen. It frees the Court to scrutinize all uninvited intrusions under the fourth amendment.

Yet, two categories of objections to the proposed formulation can be anticipated. At the "reach" level, a test turning on governmental motivation rather than location is more difficult to administer. A person's location is often provable through direct evidence; his motivation must usually be proved circumstantially. Once a policeman

FACULTY FOCUS

learns that certain motivations place his activity outside the fourth amendment, what prevents him from always claiming the innocent motivation? Aside from the obvious fact that police can attempt to manipulate *any* rule (they can lie now as to *where* they were), most of the police activity involved in these cases permit very unambiguous inferences about motivation. The law, including Constitutional law, is rife with instances in which a court must judge motivation, intent, premeditation, knowledge, purpose, belief, etc. and it accomplishes this task, for the most part, without grave difficulty. In troublesome areas, courts can use well-proven legal techniques to prevent abuse; the burden of proof, for example, can be imposed on the government to *disprove* search motivation under all or specified circumstances. One can, for example, easily imagine a rule which presumes a search, absent strong rebutting evidence, whenever a policeman enters a house.

The second category of objection is that the proposed formulation, because it recognizes so many more "searches," places undue stress on the "grasp" issue--"reasonableness." It must be conceded that reasonableness doctrine will have to be more finely tuned. Consider these observations of Professor Amsterdam:

The problem with the graduated model, of course, is [that] it converts the fourth amendment into one immense Rorschach blot. The complaint is being voiced now that fourth amendment law is too complicated and confused for policemen to understand and obey. Yet present law is a positive paragon of simplicity compared to what a graduated fourth amendment would produce. The varieties of police behavior and of the occasions that call it forth are so innumerable that their reflection in a general sliding scale approach could only produce more slide than scale.

It is often preferable, however, to adopt a rule which generates doctrinal complexity rather than one which simplifies a problem by ignoring it, especially when ignoring it begs abuse, and, most especially, when that abuse will come from the government.

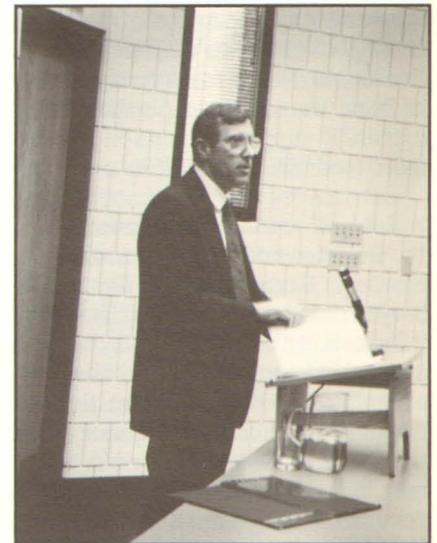
Moreover, the Supreme Court has in fact, since Professor Amsterdam's cited writing, already gone a very long way toward instituting the graduated model of reasonableness. Current doctrine recognizes all of the following concepts: physical restraint less than a typical arrest (called a "stop") justified by less than the probable cause required for arrest; physical restraint more intrusive than a common arrest (like killing the arrestee, at the extreme) justifiable only under compelling circumstances; and "searches" less intrusive than typical ("frisks," magnetometer scans at airports, administrative searches, etc.) as well as those searches uncommonly intrusive (strip searches, body-cavity searches, surgery to remove evidence, etc.), all of which require respectively less or more justification than usual. The Court seems quite comfortable administering this "sliding-scale" approach to "reasonableness."

I do not believe that the task of fitting all the new "searches" into this existing graduated model would be difficult. For example, the Court could quickly establish that all naked-eye searches from public streets or sidewalks are *per se* reasonable absent bizarre aggravating circumstances; that views into a house from a consenting neighbor's property are justifiable upon a showing of "reasonable suspicion"; that views into houses utilizing advanced technology and/or strategic location require "probable cause" and, perhaps, prior judicial approval. The varieties of police behavior may be innumerable, as Professor Amsterdam suggests, but they do tend to fit into broad, predictable categories. Despite the difficulty of such a task, however, it is preferable to burying the whole problem under the headstone, "No Search."

CONCLUSION

To conclude, fourth-amendment analysis should begin by scrutinizing governmental activity to determine if it is the kind of activity that provision is concerned about. The amendment, insofar as it extends to searches, should be understood to "reach" *any* physical seeking for a governmental purpose. Such an understanding would insure that the Court's function as guardian of constitutional liberties will not be jeopardized by decisions which put the reach too short. Once reach is too short, other branches of government must act to remedy injustices; it is crucial to note that many victims of governmental abuses have historically not had much access to those other institutions.

Under my proposal, which governmental searches are reasonable remains, as before, to be debated in an ongoing judicial discourse. The fourth amendment should not grasp everything it can reach. Indeed, the Constitution's reach must exceed its grasp, or what's a Supreme Court for?



Professor Bruce G. Berner, B.A. Valparaiso 1965, LL.B. Valparaiso 1967, LL.M. Yale 1978.

ALUMNI IN FOCUS

CLOSING COMMERCIAL TRANSACTIONS BY FAX - CAN IT BE DONE?

by: Gene Hennig, '74

One of my more senior partners likes to reminisce that the two inventions which most dramatically changed law practice in his lifetime are the photocopier and central air conditioning. Everyone can appreciate the impact of the photocopier. As to central air conditioning, I am told that back in "kinder, gentler" times, metropolitan law firms in sweltering skyscrapers had to send their lawyers home early in the summertime - thus enhancing both the quality and duration of their professional lives.

To this list of inventions a third should now be added: the facsimile telecopier (a/k/a "fax") machine.

So prevalent have fax machines recently become that one already must wonder how lawyers ever got along without them. Lawyers are now not only faxing documents across the country, but literally across the street! In my own practice, days can now go by without receiving a single item of correspondence on "real" paper. Instead, my files are increasingly full of faxed transmissions on that dreadfully slippery paper spit out by most facsimile machines in use today.

Like all revolutionary inventions, the fax is something of a mixed blessing. Certainly the ability a lawyer now has to transmit faxed information throughout the country, and indeed throughout the world, is a significant advantage. But the fax machines have also greatly quickened the "pace" of many deals. No longer may lawyers sleep while drafts of documents are shipped by Federal Express or other such ancient overnight carriers to distant counsel for review. Now, drafts can be faxed back and forth through several cycles during a single day or night, all with increased heartburn to lawyers and their clients.¹ One thing seems certain, however, regardless of how one feels about this new technology: the fax machine is an invention which is here to stay, so

lawyers had better learn how to handle it!

A nagging question which has continued to haunt me, as a corporate lawyer, is whether - or at least to what extent - commercial transactions can be closed by fax. Is a signature faxed over the telephone lines to an opposing party really a legally binding signature? Does the answer to this question depend on the type of document bearing the faxed signature? What happens if a party executes a document and faxes the signature, but then fails to ever deliver the original document? These are issues for which commercial clients are looking to their lawyers for answers.

Consider this example: A Bank in Minneapolis is eager to arrange for a \$10 million credit facility for an equally eager Borrower in San Francisco. All of the funds will be used to acquire new factory equipment. Standard documentation for the transaction will include a Credit Agreement and Promissory Note evidencing the term loan, which indebtedness is to be secured pursuant to a Security Agreement. Negotiation of all material terms in the documents has been completed, and both parties want the funds to be wire transferred *today*. No one wants to go to the inconvenience and expense of travelling to a closing only for the purpose of executing the documents. Your banker client inquires of you whether counterparts of the signature pages of the transaction documents can simply be executed by the respective parties in Minneapolis and San Francisco and then faxed to close the deal. What do you say?

There is no point in running to the library for answers, for to date not a single appellate court in the country has considered the problems of closing a commercial transaction by fax.² But does not the law of contracts and secured transactions provide at least some guidance, even if there are no reported cases directly on point? Perhaps.

The modern law of contract has admittedly come a long way from the

days when seals and elaborate attestation clauses were needed to authenticate a writing.³ It is generally agreed today that the term "signature" should be construed broadly to include any mark or sign, whether written or printed, which is intended by the party to be charged to authenticate the contract.⁴ To much the same effect is § 1-201(39) of the Uniform Commercial Code (the "Code"), which defines the term "signed" to include "any symbol executed or adopted by a party with present intention to authenticate a writing." A faxed signature on at least the Credit Agreement and the Security Agreement in our foregoing example should arguably therefore be sufficient to satisfy whatever technical legal requirements exist that contracts be properly authenticated.

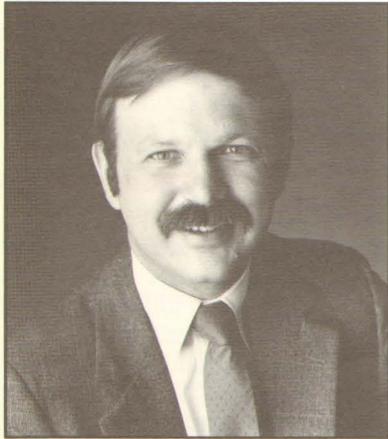
Nor should there be any serious problem with meeting whatever "delivery" requirements might pertain to either the Security Agreement or the Credit Agreement. Article 9 of the Code contains no requirement that an original Security Agreement be physically delivered in order for the agreement to be binding. So, too, there is nothing in the more general law of contract which would necessitate physical delivery, other than evidentiary concerns in having the "best evidence" should disputes arise. But even here it is likely that the "best evidence" rule would be construed in a manner flexible enough to permit introduction of a faxed document into evidence, at least in instances where the original was unavailable.⁵

So far so good - faxed signatures seem to work for commercial documents like the Credit Agreement and the Security Agreement in our example. But what about the Promissory Note executed by the Borrower?

As a general proposition, notes which are intended to be negotiable can only be enforced by a holder in actual possession of the instrument. This result flows from § 3-301 of the Code which states that only a "holder" has standing to enforce such an instrument, and from § 1-201(20)

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where the term "holder" is defined as a person "who is in possession" of an instrument. This result also makes sense. If the law is going to have any success at all in preventing the maker of a note from having to pay twice, which could occur if photocopies of an original note were given credibility, then it ought to require production of the original as a condition precedent to payment.



Gene Hennig, '74

Let us assume, however, that the Bank in our hypothetical example does not particularly care about whether or not the Promissory Note is negotiable; that is, the Bank is willing to take the chance that it would not be able to transfer (*i.e.*, negotiate) a faxed copy of the Promissory Note to a third party. Is the Note at least enforceable by the Bank against the Borrower? Here the law is less clear. Suffice it to say that disconcerting cases can be found from a number of jurisdictions holding that, without regard to the question of negotiability, only the holder of the original note can enforce it.⁶ As they say here in Minnesota - Uffda!

Does all of this mean that the Bank is going to be holding an unenforceable debt for \$10 million against the Borrower? Well, probably no - at least not if the terms of the Credit Agreement are complete enough to provide independent evidence of the indebtedness. What all of this could very well mean, however, is that the Bank might be facing a much more difficult task enforcing a debt evidenced by a faxed Promissory

Note than would otherwise be the case had it held the original.

Another area of concern in trying to close a commercial transaction by fax is what to do about the UCC-1 financing statement needed to be filed in order to perfect the Bank's security interest in our example. Section 9-402(1) of the Code states fairly plainly that a reproduction of a financing statement is only sufficient as a filing if the *original* has already been filed. And, in any event, it is difficult to believe that any filing officer would accept a faxed UCC-1 regardless of the strength of any technical legal arguments to the contrary. A faxed financing statement is therefore not going to do the job.

There are possible ways of getting around this problem in some commercial transactions, provided the parties go to the trouble of some advance planning before the closing date. If the Borrower is agreeable, financing statements can always be executed and delivered by the Borrower in advance of closing, thus enabling the Bank to file the UCC-1 before money is advanced. Moreover, in the case of purchase money extensions of credit, § 9-312(4) provides a 10-day grace period (now 20 days in many states) to make a filing after the closing occurs. Regardless of how all of this plays out, it must be remembered that the Bank is going to need an original financing statement to file within the deadlines established by the Code; otherwise, the Bank may incur substantial risk that its security interest will lose priority.

So where does all of this discussion leave us? Can we or can we not be recommending to our clients that it is permissible to close a commercial transaction by fax? In my own mind, the following considerations are relevant:

1. Know and understand the legal requirements for execution and delivery of the documents you are handling. Ordinary contracts, personal property leases, security agreements and such documents probably can be closed with faxed

signatures. Negotiable instruments and documents that need to be filed (*e.g.*, mortgages and financing statements) are probably only going to be effective as originals in most states.

2. Insist that the original signatures to all documents executed by fax be sent immediately after closing (preferably by overnight mail). When all is said and done, there is nothing like an original signature to remove any possible defense that execution of a document or instrument was inefficacious.

3. Realistically, evaluate the risks and the benefits of closing by fax. Closing a small deal by fax obviously makes a good deal of sense when the Borrower is in Bismarck and it's 20 degrees below zero there; much less advised (perhaps even insane) is closing a multi-million dollar loan transaction in sunny California similar to our hypothetical example.

Let me know if any of you V.U. alumni have any further thoughts on any of this. For now, I have to bring this article to a quick close and get it to Curt Cichowski (Editor of the *AMICUS*) in order that he can meet his deadline. Thank God I can fax it to him!

ENDNOTES

1. Commercial lawyers are not the only ones whose practices have been revolutionized by the fax machine. Minnesota recently became the first state in the country to allow the filing of all trial documents by fax - *e.g.*, briefs, complaints, motions, etc. Even arrest and search warrants may now be issued by fax in Minnesota! Other states will undoubtedly soon follow. See, *The National Law Journal*, p.1 (March 6, 1989).

2. Cf., *Calabrese v. Springer Personnel of New York*, 534 N.Y.S.2d 83 (1988), where a frustrated judge last fall remarked: "Startling as it may seem...no published opinion has been found considering the applicability of fax machines to the conduct of litigation." *Id.*, at 84. To the best of my knowledge, this is the

ALUMNI IN FOCUS

only reported opinion having anything to do with fax machines in any aspect of law practice.

3. A word of warning: Professor Meyer was on sabbatical in 1971-72 when I was supposed to be taking contracts at V.U. Any erroneously stated contract law in this article is therefore his fault!

4. See, Restatement, Contracts 2d, § 134.

5. See, McCormick on Evidence § 236 (3rd ed. 1974); Federal Rules

of Evidence 1003. One can only surmise what fun the late Professor Stevenson would have had ruminating over fax machines and the "best evidence" rule.

6. *Locks v. North Towne Nat. Bank*, 115 Ill. App. 3rd 729, 451 N.E.2d 19 (1983); *Miller v. Merchants Bank*, 138 Ut. 235, 415 A.2d 196 (1980).

Biography

Gene Hennig is a partner in the Minneapolis law firm of Rider, Bennet, Egan & Arundel, where he specializes in corporate finance and commercial

transactions. For three years after graduating from the law school in 1974, he remained at the law school as a member of the faculty (an experience, he says, that is fondly remembered!). Throughout the past eleven years, Mr. Hennig has also served as a member of the adjunct faculty at the William Mitchell College of Law in St. Paul, most recently teaching the course offered in Secured Transactions. Mr. Hennig currently serves as a member of the V.U. School of Law Board of Visitors. (He can be reached by FAX at 612-340-0701.)

Homecoming 1989

Homecoming for the 1989-1990 academic year will be on October 20, 21, and 22, 1989. The School of Law and the School of Law Alumni Association intends to make a number of changes in the Homecoming festivities, in hopes of attracting more alumni and their families back to the hallowed halls of Wesemann Hall. While many of these plans are tentative, the weekend is scheduled to include:

Friday, October 20, 1989:

Afternoon Meeting of the School of Law Alumni Association Board of Directors

Saturday, October 21, 1989:

The morning will begin with a 3-5 mile walk/run through campus, beginning and ending at the School of Law (complete with t-shirts and prizes).

Two CLE programs will be offered Saturday morning, each running from 9:00 a.m. to 12:00 noon and each worth three hours of CLE credit. One session will offer advanced extensive computerized legal research, with the assistance of Westlaw. The other program will be offered by Professor Robert Blomquist, and will deal with environmental issues for the general practitioner.

In the afternoon, there will be a "tail-gate" party in the oak grove next to Wesemann Hall, followed by the afternoon VU Crusaders football game (group seating will be arranged).

The traditional dinner will again be offered, but at a new location and with an expanded agenda. After the dinner, there will be a band (hopefully of the "big-band" variety) to provide entertainment for the evening. The dinner/dance will be held at the SPA Restaurant in Chesterton Indiana.

Of course, there will be a number of University events as well, such as the parade on Saturday morning, and the special Chapel Service on Sunday morning.

PLAN ON ATTENDING! MARK YOUR CALENDARS NOW, AND WATCH FOR ADDITIONAL INFORMATION!!!!

CLASS NOTES

1952

Gerald Deller retired to Florida in 1974 after 23 years of trial practice. Thereafter he was appointed as Federal Administrative Law Judge and retired a second time in 1988.

John S. White is an attorney mediator in Muskegon, Mich.

1957

Charles R. Vaughan of the law firm Vaughan, Vaughan & Layden has changed the firm's name to read "The Vaughan Law Offices."

1958

Glenn Tabor was commissioned to speak at the 24th Annual Institute, a two-day continuing education forum sponsored by the Indiana Trial Lawyers Association. He is a member of the ITLA Board of Directors and is president-elect of the association.

The law firm of Blachly, Tabor, Bozik & Hartman held a reception in honor of Glenn as incoming President of the Indiana Trial Lawyers Association at the Westin Hotel in Indianapolis.

1959

Richard G. Hatcher was hired by cable television as a political consultant. He will be responsible for increasing the awareness of the network among black leaders and advising BET (Black Entertainment Television) on policy issues that affect the black community.

1960

Joel Bravick has retired as president of Waterfield Mortgage, Co. in Fort Wayne, Ind.

1961

Carla (Orthwein) & Al Zimmerman are living in Indianapolis, Ind., where Al is practicing tax, probate, and corporate law.

1966

Norman Buls has been appointed

the new Porter Superior Court - County Division Judge. He was sworn in on New Years' Day by Circuit Court Judge **Raymond Kickbush**, '59

1967

Michael Hutson has become a committee member for Troy Chamber of Commerce in Troy, Mich.

Peter K. Wilson, Jr. has been selected Associate Judge by the Kane County Bar Association and serves as "post-decree" judge in family court. He was in private practice with Puckett, Barnett, Larson, Mickey, Wilson & Ochsenschlager in Aurora, Illinois from 1970 until his appointment.

1971

David A. Butterfield, Mayor of Valparaiso, Ind., was recently elected Vice-President of the Northern Indiana Mayor's Roundtable. He was also elected Vice-President of the governing board of Kankakee Valley Job Training.

George H. Sisson has accepted the position of Command Judge Advocate, U.S. Army Medical Research and Development Command at Fort Detrick, Maryland during the summer of 1988.

1972

Thomas Kent Guelzow was elected Vice-President of the Wisconsin Academy of Trial Lawyers and also was appointed to the Litigation Section and Tort Law Committee of the State Bar of Wisconsin.

Karen Osmond Hughes was re-elected in November to the Porter County Council in Valparaiso, Ind.

1973

John Pleuss is an administrative law judge for the Federal Government. His wife, Phyllis, is job-sharing a position as social worker, working with emotionally disturbed children, at a residential treatment center.

John C. Voorn has relocated from Orland Heights, Ill. to Palos Heights, Ill.

1974

Alan F. Saake has become Of Counsel to the law firm of Portes, Sharp, Herbst & Kravets, of Chicago, Ill. Alan concentrates his practice in the areas of Federal and State Taxation and Employee Benefits.

1975

Kenneth Lowenstine and his wife Jane reside in Valparaiso. Ken works full time as a wood sculptor of wildfowl.

1977

Daniel R. Berning & Nancy Jane Dean '86 were married March 18, 1989, at the First Christian Church in Valparaiso, Ind.

Ann Hartmann Crane has accepted a position with the National Labor Relations Board in Chicago, Ill. In addition, this summer Ann will receive a Master's Degree in Labor Relations from Loyola University of Chicago.

1978

Gregory M. Snyder practices law with the firm Menges, Dorion & Snyder in York, Penn.

Steven W. Purtell is an Assistant Staff Judge Advocate at Ft. Bragg, N.C. He and wife Justine are awaiting the arrival of their son in June. Their daughter, Tracy, is 14 months old.

1980

Robert M. Shafis has been named Director of Planned Giving for The Lutheran Church-Missouri Synod. He manages a staff of approximately thirty individuals in St. Louis and across the country who are engaged in an estate planned giving program which in 1988 reported \$68,000,000 of gifts to The Lutheran Church-Missouri Synod and its entities.

CLASS NOTES

Jill Sisson was retained as the town's attorney for 1989 by the Ogden Dunes Town Board.

Nancy Harris Vaidik was retained as the Board's attorney for 1989 by the Portage Board of Zoning Appeals.

1981

Jon P. Dilts now heads the Law Division of the Association for Education in Journalism and Mass Communications. He is an Associate Dean and Associate Professor at Indiana U. School of Journalism.

Mark A. Lienhoop has become a partner with the firm of Newby, Lewis, Kaminski and Jones, in La Porte, Ind. The majority of his practice is personal injury defense.

Thomas L. Storm has been appointed Fond du Lac County corporation counsel. Storm previously was director of the Senate Republican Caucus staff in Madison, Wisc.

1982

Maggie Mawby and Nelson Chipman '81 are pleased to announce the birth of their 3rd child, Maria Mawby Chipman born March 29, 1989.

Dennis Meyer has moved from Lakewood to Littleton, Colo.

Mary Squyres has rejoined the Corporate Law Department at Sears after serving as a lobbyist in the Government Affairs Division. Mary has primary responsibility for international trademark work.

1983

Jon C. Abernathy has become a partner in the firm of Goodin and Kraege in Indianapolis, Ind.

Leane English Cerven and her husband **David** ('82) are pleased to announce the birth of their son, Bennet English, on December 7, 1988. Ms. Cerven left Mayer, Brown & Platt on February 16, 1988 to accept a position as Senior Attorney

with the First National Bank of Chicago.

Patrick Harrington and his wife Lori are pleased to announce the birth of their first child, Kristen Therese, born November 25, 1988. Patrick has become a partner in the law firm of Trueblood & Graham in Lafayette, Ind.

Joan Kouros has been selected by the Lake County Prosecutor to be the new trial supervisor. Joan will supervise deputies prosecuting criminal cases before two of the four judges in Superior Court, Criminal Division.

Mark E. Kreter and his wife, Cathy, are pleased to announce the birth of their son, Kevin Mark, born December 30, 1988. Mark is a civil litigation attorney for the law firm of Sullivan, Hamilton, Schulz, Kreter & Toth in Battle Creek, Mich.

Thomas R. Hamilton has become a partner in the firm Daniels, Sanders & Pianowski, in Elkhart, Ind.

Perry C. Rocco has become a partner in the law firm of McKenna, Storer, Rowe, White & Farrug in Chicago, Ill., effective January 1, 1989. Perry specializes in product liability and tort defense litigation.

Randal J. Wray has formed his own law practice under the name of Law Offices of Randal J. Wray, located in Orland Park, Ill. His office is a general practice firm concentrating in the areas of family law, criminal law and real estate.

1984

Brian Hurley has become a partner in the firm of Douglas, Douglas & Hurley in Valparaiso, Ind.

Stacey Saunders is an investigator for the Alaska State Commission for Human Rights in Anchorage, Alaska.

Diane Quinn Erickson and her husband, Russ, are pleased to announce the birth of their son, Andrew Lee, born January 21, 1989. Diane continues to practice in the areas of probate and estate planning.

Mary Ellen Magallon, an employee of the U.S. Postal Service has become engaged to Daniel Joseph Avalos, a graphic arts designer for Sharper Image in San Francisco. The couple are planning a fall wedding.

1985

Ellen & Patrick Fujawa are pleased to announce the birth of their daughter, Jennifer Meredith, born February 8, 1988.

Keith Hunt has become associated with the firm of Anderson & Chisholm in Southfield, Mich.

Jeffrey E. Ramsey has become associated with the firm Hostetler & Kowalik, P.C. in Indianapolis, Ind.

Dugal S. Sickert has relocated to Cincinnati, Ohio and is practicing patent law at Merrell Dow Pharmaceuticals, Inc.

Gregory C. Ward has become associated with the law firm of Craige, Brawley, Liipfert & Ross in Winston-Salem, N.C.

1986

Anne Blatchford is an attorney on the legal staff of the City of Rockford, Ill.

Joel M. Barkow has been accepted into The Peter Start Motion Picture Producing Program at the University of Southern California.

Terri M. Golobish has taken a position with Nationwide Insurance Company as in-house counsel, in Harrisburg, Penn.

David Goodnight has been accepted to the LL.M. program at Yale.

Stephen T. Saporta is clerking for Justice **Alfred J. Pivarnik**, '51, Indiana Supreme Court in Indianapolis, Ind.

1987

William J. Barath has accepted an associate position at Schottenstein, Zox & Dunn in Columbus, Ohio.

CLASS NOTES

Brian T. Gensel was appointed Deputy Prosecuting Attorney of Porter County, Indiana on September 26, 1988.

Ronald J. Kurpiers II was appointed Assistant U.S. Attorney. He works in the criminal division in Hammond, Ind.

William J. Parkhurst married Julie Feuerborn on April 1st, 1989 in Batavia, Ill. Julie is a substitute teacher with Kent County Intermediate School District in the Grand Rapids area. Bill is an attorney with the law firm of Visser and Bolhouse in Grandville, Mich. They will be living in Wyoming, Mich.

Robin Smith is practicing law with the firm of Oosterbaan, York & Cooper in Kalamazoo, Mich.

Charlotte A. Weybright-Rickord has accepted the position as the Attorney for the Child Support Division of the Whitley County Prosecutor's Office. Charlotte also serves as legal counsel for a local abstract and title insurance company. She is also serving on the Board of Directors for the Legal Services of Maumee Valley in Fort Wayne, Ind. Charlotte married Robert L. Rickord in August, 1988.

1988

Roland W. Norris has joined the Law Office of Arnold Weintraub in Troy, Mich.

Kimberly Scanlan married Kriss Carlson in September, 1988. Kim has become associated with the law firm of Kreisman & Rakich in Matteson, Ill.

John Whitfield was elected to the ABA's Section on Natural Resources Energy and Environmental Law, Vice-Chairperson for the Toxic and Environmental Torts Committee and Membership Committee for 1989-90.

Valparaiso University Law Review Subscription Programs

There are a number of ways to subscribe to and support the *Valparaiso University Law Review*. Upcoming issues will feature "The Supreme Court and the Incredible Shrinking Fourth Amendment" (based on the Inaugural Lecture of Professor Bruce Berner) as well as articles based on the annual Monsanto Lecture and Seegers Lecture.

LIFE PATRONS of the *Review* receive a life-time subscription, in addition to being listed in all future issues of the *Review*. Becoming a LIFE PATRON requires a minimum contribution of \$1,000, which may be paid in full or in four equal annual installments. A LIFE PATRON Certificate is issued to each Life Patron.

BENEFACTORS of the *Review* receive a one-year subscription in exchange for a minimum contribution of \$100.00. Each Benefactor is issued a BENEFACTOR'S Certificate and is listed in the *Review*.

CONTRIBUTING PATRONS of the *Review* receive a one-year subscription in exchange for a minimum contribution of \$50.00. Each Contributing Patron is listed in the *Review*.

SUPPORTING PATRONS of the *Review* receive a one-year subscription in exchange for a minimum contribution of \$25.00. Supporting Patrons are listed in the *Review*.

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The *Review* is published three times annually, and individual issues are available at a rate of \$8.00 per issue.

TO ENROLL AS A LIFE PATRON, BENEFACTOR, CONTRIBUTING PATRON, SUPPORTING PATRON OR AS A REGULAR SUBSCRIBER, CONTACT THE VALPARAISO UNIVERSITY LAW REVIEW AT (219) 465-7805.

CALENDAR

School of Law Activities

August 18	New Student Orientation
August 21	Classes Begin, 1989-1990 Academic Year
September 5-12	Office of Career Services Career Week
November 2	Monsanto Lecture Peter Huber
November 3-4	VUSL Board of Visitors Meeting

Alumni Activities

October 19	Alumni Reception Indiana State Bar Association Fall Meeting - French Lick, IN
October 20	VUSL Alumni Board Meeting
October 21-22	Homecoming

Job Interview Programs

August 18-19	Patent Law Job Fair - Chicago
August 25-26	National Health Care Job Fair - Chicago
September 15	Indianapolis Job Fair
October 7	Midwest Minority Recruiting Conference Cleveland
October 27	NAPIL Conference - Washington, D.C.
October 27-28	Washington D.C. Job Fair

Continuing Legal Education Programs

Date	Seminar Topic	CLE Credits
June 1	Inheritance	6
June 6	ERISA	6
June 15-16	Medical Malpractice	12
June 20	School Law	6
June 22	DWI Defense	6
June 29-30	Administrative Law	12
July 6	Contract Law	6
July 13	Workers' Compensation	6
July 20	Chapter 13	6
July 27	Bankruptcy	6
August 10	Legal Opinions in Indiana Business	6
August 31-September 1	Hazardous Waste	12

Alumni News

Office of Career Services
Valparaiso University
School of Law
Valparaiso, Indiana 46383

NAME _____ J.D. Year _____ New Address

ADDRESS (home) _____
Street City State Zip Phone

(business) _____
Street City State Zip Phone

News about self or other alumni _____

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Office of Career Services
Valparaiso University
School of Law
Valparaiso, Indiana 46383

Placement Items

NAME _____ J.D. Year _____

BUSINESS ADDRESS _____
Street City State Zip Phone

Employment opportunity for a Valparaiso law student
Please identify and describe _____

Contact person _____

Employment opportunity for a Valparaiso law graduate
Please identify and describe _____

Contact person _____

Please send me a copy of the School of Law's monthly Job Bulletin.

----- Please detach and return to -----

Admissions Office
Valparaiso University
School of Law
Valparaiso, Indiana 46383

Admissions Recommendation

NAME _____ J.D. Year _____

ADDRESS _____
Street City State Zip Phone

Prospective Admissions Candidate(s):

Name(s) _____

Address(es) _____
Street City State Zip Phone

Comments: _____

 Please send an admissions packet to the prospective student(s) indicated above.

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