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Valparaiso University School of Law

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LETTER FROM THE EDITOR

Within the last two months, you received two special mailings from the School of Law. Each was a request for your support. It is no secret that the vast majority of donations to charitable institutions are made at year's end. Consequently, that is when most such institutions send out "reminders." I find it comical, however, to receive my federal and state tax forms at about the same time. I don't know about you, but receiving the dreaded 1040 never puts me in a charitable mood.

Anyway, one of the mailings was an invitation to become involved as a "patron" of the law school by responding to the Dean's Annual Giving Letter. This issue of the AMICUS, for most of you, is the first chance you have had to visit the new Wesemann Hall. The introduction to the new building on page nine gives just a hint of the incredible advancements we have made. It goes without saying (I'll say it anyway), but our continued enhancement depends in large part on your willingness to become an active part of the program. Although we have already received an impressive response to the letter, there is always room for improvement. If you have yet to respond to the letter, there is still time to do so...

The other mailing, a reminder about alumni/ae dues, came from the Alumni Association. As active as the Alumni Association is, less than 20% of you are dues paying members. Imagine what the Association could accomplish if that percentage was increased to even 50%. Dues are only $30. They are the only income for the Association, who funds this magazine (in part) as well as a number of other vital programs (see the box on page 16) that benefit law students as well as law alumni. Please give serious consideration to becoming a dues paying member of the Valparaiso University School of Law Alumni Association.

I am afraid that many of you have not become active "patrons" because you feel you have lost touch with us and really know nothing about what we have become. We will do what we can to remedy that situation. Your input, comments, suggestions and support are always welcome.

Curtis W. Cichowski, '81
Editor in Chief
During the recently completed fall semester the law school calendar was once again filled with a number of activities. The highlights included a career week in September, an International Law Society symposium, the annual meeting of the School of Law Board of Visitors, the Monsanto Lecture, and the ABA-sponsored negotiation competition, which we hosted for the first time. In addition, the regular continuing legal education programs continued. These included a program on AIDS sponsored by the School of Law during homecoming weekend in October.

Several programs are scheduled for the 1989 spring semester. One of these is a fair housing-fair lending seminar on April 20-21, which the law school will co-sponsor with the U.S. Department of Housing and Urban Development. The first such seminar was held at Indiana University Law School in Bloomington last April and it is expected there will be an annual seminar, with each of the law schools in Indiana co-sponsoring it every four years. One of the topics of interest this year will be the Fair Housing Amendments Act of 1988, Public Law 100-430, which was enacted September 13, 1988, and becomes effective 180 days after that date.

The Fair Housing Act was passed in 1968 and generally prohibits discrimination in housing and lending on the basis of race, religion, sex, or national origin. One of the most significant of the 1988 amendments expands the coverage of the Act to prohibit discrimination on the basis of handicap or familial status. The protection against discrimination on the basis of familial status is designed to make housing more available to families with children under the age of eighteen. Approximately sixteen states already provide some protection to families, but the provisions vary widely. A HUD survey, referred to by Congress, found that 25 percent of all rental units do not allow children.

The protection afforded to handicapped persons under the 1988 amendments will have a substantial impact on housing. It not only requires that handicapped persons be allowed to make reasonable modifications of existing premises and reasonable accommodations in rules, policies, practices, and services, but also establishes certain design requirements for new multi-family dwellings in which the first occupancy is scheduled for thirty months after enactment of the 1988 amendment. One of the other major changes resulting from the 1988 amendments is the expansion of enforcement powers vested in the Secretary of HUD. In addition to the investigation and conciliation powers provided in 1968, the Secretary will be empowered to make reasonable cause determinations, provide an opportunity for hearing before an administrative law judge, and initiate litigation through the Attorney General. Further, the Secretary is required to adopt rules and regulations implementing the 1988 amendments. While private enforcement remains crucial under the amendments, the role of the Secretary has certainly become more important.

As indicated in the 1988 annual giving letter, Assistant Dean Curt Cichowski recently assumed responsibility for the law development program. This is significant not only because of the importance of developing new sources of non-tuition income, but also because I believe it represents the beginning of a new era in relations and cooperation between the School of Law and the University Development and Public and Alumni Affairs offices. We look forward to this new relationship and your cooperation with Curt in the future.

I hope you enjoyed the holidays and have a successful 1989.

Ivan E. Bodensteiner
Dean
MESSAGE FROM THE PRESIDENT

Happy new year to one and all. I trust your holiday season was one of joy, hope and fulfillment. At this time of year, I always want to congratulate our alumni for having made it through another year with all the roles, or combination thereof, we must play: spouse, parent, child, sibling, counselor, negotiator, mentor, litigator, boss, referee, miracle worker, equalizer, alley fighter, diplomat,peon, hired gun, etc. They didn't tell us about all of this at Valpo, that's for sure. Part of the law school conspiracy, I guess.

Way back in October, we of the Alumni Association Board, made some significant decisions. Without batting an eyelash, we raised your dues $5.00 a year. Seriously, the impetus for that move is primarily for continued funding of this masterpiece you are currently reading, the AMICUS. As I have stated in the past, I don't think any alumni, law students, or even the professors are displeased with this product. We know a good thing when we see it, and we'd like to keep it going. In addition, we'd like to encourage you to contribute articles to the AMICUS. Lawyers are usually not at a loss for words, so we'll look forward to hearing from you. Please send any and all contributions to Assistant Dean Curt Cichowski.

Another project we're looking forward to is working together with the University as they design an alumni placement network. By designing a system that can be advantageous to both groups of alumni (and, of course, many of you are alumni from the University and the law school), we can only expand our placement services for both law students and alumni. We will notify you of this joint endeavor as it progresses.

We also have an ad hoc committee, headed by Roger Benko, '72, of South Bend and Associate Dean Bruce Berner, to propose a mechanism whereby the Alumni Association can honor distinguished Alumni. Please send your suggestions about procedures and/or possible candidates to Bruce Berner.

Last but not least, the Nominations Chairman of the Board, Don Seberger, '80, of Illinois, reported the following:

Six incumbents were re-elected:
Mark Bates, '81  
Jon Dilts, '81  
Robert Lee, '66  
Don Seberger, '80  
Mary Squyres, '82  
Donn Wray, '80

Derrick Carter, '75, of Detroit, Michigan was elected to the Board for the first time, and hopefully not last time.

The Board then moved, seconded and carried a motion to approve the slate of officers as presented in the April 15th board meeting:

President: Mary Squyres, '82  
Vice President: Don Seberger, '80  
Secretary: Jack Lawson, '61  
Treasurer: Ed Brown, '51

I would personally like to once again acknowledge the special efforts of the outgoing officers, John Lee, '77 and Donn Wray, '80 and Board member, David McCain, '58. We truly appreciate the time and commitment you gave to the law school. For new and old officers and Board members, let's keep up the good work. I think we have worked well together, and I look forward to continuing our worthwhile efforts.

In closing, a very special thank you to the administrative staff at the law school, including Dean Bodensteiner, for listening to us and involving us in the affairs of the law school. We appreciate your cooperation and continued faith in us to carry forward the traditions of the law school along with all of you.

With warmest personal regards for a happy and prosperous new year, I remain

Sincerely yours,
Mary M. Squyres
President
Valparaiso University
School of Law
Alumni Association

The Young Lawyers Section of the Indiana State Bar Association may have the solution to your recruiting problems
announcing

The First Annual Job Interview Program
An opportunity to interview law students from all four Indiana law schools at one location
The Embassy Suites North, Indianapolis
February 24 & 25, 1989
Watch your mail for more information and registration forms.
For answers to your preliminary questions, please call the following co-sponsors (placement directors):

IUS School of Law
Bloomington
Mary K. Moody
812/335-0258

IUS School of Law
Indianapolis
James Bindley
317/374-2464

Notre Dame Law School
South Bend
Nancy Kommers
219/239-7542

Valparaiso University
School of Law
Gail Peshel
219/465-7814
VALPARAISO UNIVERSITY'S NEW PRESIDENT

Dr. Alan F. Harre, formerly president of Concordia College, St. Paul, Minnesota, was inaugurated as the 17th president of Valparaiso University on Wednesday, October 26. The Inauguration was the focal point of a week-long celebration that included VU's annual "Week of Challenge," the Miller Memorial Lecture, a Faculty Symposium, and an Inaugural Dinner and Ball. In addition to faculty, staff, students, and the VU Board of Directors, the Inauguration was attended by representatives of learned societies, 86 delegates from other colleges, universities and seminars, and ecclesiastical representatives from the Lutheran Church_MISSOURI SYNOD, Evangelical Lutheran Church in America and its Board of Directors, the Inauguration was the 17th president of Valparaiso University's president. In 1984 he became president of Concordia College, St. Paul, Minnesota. He assumed his new duties as president of VU in July, 1988.

The new president is the author of Close the Back Door and numerous articles and reviews. He and his wife, Diane, are the parents of three children: Andrea, Jennifer, and Eric.

Dean Ivan Bodenstein lectured at three continuing legal education programs during the Fall semester. On September 15 and October 25 he spoke on the topic of federal court litigation—the first time at a CLE program sponsored by the Indiana Legal Services Support Center, and the second at a program presented by the Land of Lincoln Legal Assistance Foundation. Dean Bodenstein was also one of the lecturers at the Homecoming CLE sponsored by the VU School of Law on AIDS: Employment and Education Issues. He spoke on federal legislation relating to AIDS.

Associate Dean Bruce Berner addressed the Indiana judges at their Judicial Conference in Clarksville, Indiana, on September 14. His topic was "Recent Developments in Criminal Procedure." Beginning on November 21 Dean Berner taught a five week course to Valparaiso High School senior honor students on "The Insanity Defense: Legal and Psychoanalytic Perspectives."

Professor Seymour Moskowitz also spoke at the VU Homecoming CLE on confidentiality and the duty to warn in AIDS cases. Professor Moskowitz presented a paper on "The Role of Religion in Higher Education" at a forum in honor of the inauguration of Alan Harre as President of Valparaiso University. His article on "Codes of Ethics and Employment-at-Will: The Professional's Dilemma" will be published in the November 1988 issue of the Valparaiso University Law Review.

Professor Richard Stith writes that his teaching and writing in "the other Valparaiso" (the one in Chile) has been most rewarding this semester. He has offered courses at two "Valparaiso Universities" down there (one Catholic and one state). Public lecture topics have ranged from the "Glorious Revolution of 1688" to "Legal Science in the 21st Century." He expects a number of his essays to be published in Chile, and he has been asked to join the board of a Chilean history of law journal. Major national newspapers (both for and against the government) have featured interviews with him. All this work has, of course, been in Spanish.

On the personal level, Professor Stith and his wife, Rosemarie (and his children Sarah and Marah) are faring well, living in what is essentially an elegant beach resort. They report that the quality of the fish and shellfish is the best they have ever encountered.

Professors Paul H. Brietzke and Jack A. Hiller attended the Colloquium, "Troisieme Journees Juridiques Franco-Americaines" in conjunction with the annual meeting of the American Association of the Comparative Study of Law held in New Orleans November 11-12, 1988. Professor Hiller is a member of the Board of Directors of the Association.

Professor Brietzke attended an October conference at Bowling Green State University on "Economic Liberties and the Constitution." He has been asked to present a paper, "The Law and Economics of Violence," at a philosopher's conference in March on "Law and the Legitimation of Violence." Also in March he will lead a lawyers' delegation on a two-week trip to the Soviet Union.

Sarah Holterhoff, Documents Librarian, spoke about current concerns of the Depository Library Council at a workshop for depository librarians held at the Indiana State Library on November 11, 1988. As chair of the Government Documents Discussion Group of the Indiana Library Association, Ms. Holterhoff is currently planning two programs for the May 1989 I.L.A. meeting: on government information for small businesses, and on CD-ROM technology. Law Librarian Mary
Persyn and Reference Librarian Naomi Goodman also attended the depository librarians’ workshop.

Professor Persyn attended the Second National Conference of the Library & Information Technology Association in Boston in October. The topic of the conference was “Effective Technology, Excellent Service: Putting the Pieces Together.” At the fall meeting of the Ohio Regional Association of Law Libraries in Indianapolis in October Professor Persyn completed her term on the Board of Directors of the Association. At the meeting she led a discussion group on the problems in academic law librarianship. Librarian Naomi Goodman was also in attendance at the meeting.

Professor Ruth C. Vance ’82, coached the Negotiation team entered by VU in the ABA/LSD sponsored Negotiation Competition. The meet was held at the VU School of Law on November 19, 1988. Twelve teams from law schools in Michigan, Indiana, Illinois and Minnesota competed in the contest which was won by Northwestern. The members of the two VU teams were Kingsley Regnier, 3L, Tony Makin, 2L, Roger Weitgenant, 2L and Linnea Nelson, 2L. The alternates were Georgeanne Orlich, 2L and Allen Fore, 1L. Brian Stiller, 3L, was the student coach.

Professor David Myers has just completed work on the 1989 Supplement to Nimmer’s Cases and Materials on Copyright and Other Aspects of Entertainment Litigation for the West Publishing Company’s American Casebook Series. Professor Myers’ co-authors are David Nimmer, an entertainment lawyer associated with Irell & Manella in Los Angeles, and Paul Marcus, Professor of Law at the University of Arizona.

Professor Robert F. Blomquist gave a lecture entitled “Humankind’s Search for Meaning: The Power of Environmental Myth” to Professor Stan Goldman’s nature literature class at Purdue University in West Lafayette on October 30. On November 3 he gave a presentation at the Valparaiso University faculty brown bag lunch series on the topic of “Waste Reduction: Toward the Third Generation of Environmental Regulation.”

Professor Blomquist has completed a manuscript for a book, Good Counsel: Meditations on Being and Becoming an American Lawyer.

Katharine Wehling, ’83, Assistant to Dean Admissions, has been appointed by University President Alan Harre to be Affirmative Action Officer for the University. Ms. Wehling attended the ACCESS 2000 Conference in Washington, DC, sponsored by the American Bar Association, the Association of American Law Schools and the Law School Admissions Council to discuss diversity in the legal profession.

Gail Peshel, Director of Career Services was recognized at the annual meeting of the American Agricultural Law Association for creating, organizing and coordinating their job/recruitment fairs for the past four years. Mrs. Peshel spoke at the 92nd Annual Meeting of the Indiana State Bar Association held at French Lick, Indiana. Her topic was “The Nuts and Bolts of Hiring,” a program aimed at attorneys from small law firms.

Mrs. Peshel attended the Fall Board of Directors meeting for the National Association for Law Placement in West Palm Beach, Florida. She reported to the Board as Co-Chair of the Research Committee.


Rodney Nordstrom, 2L, has written an article entitled “Inadequate Anesthesia, Post Traumatic Stress Disorder, and Medical Malpractice” which will appear in a forthcoming issue of Case & Comment.

On October 31, Professor Robert Blakey of the Notre Dame Law School, one of the architects of the Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO), spoke at VU on “The Controversy Over RICO” discussing the increased use of RICO in civil commercial litigation.

1988 MOOT COURT

On November 17 and 18 two Valparaiso Law School teams participated in the Regional round (Indiana, Illinois and Wisconsin) of the 39th Annual National Moot Court Competition in Milwaukee, Wisconsin. The Competition is sponsored annually by the Young Lawyers Committee of the Association of the Bar of the City of New York and the American College of Trial Lawyers.

The Valparaiso teams, coached by Professor Robert F. Blomquist, consisted of the following law students: Paul W. Ritsema, Bradley M. Soos (brief writer) and Myroslava Struck; and, Julie Ezell, Michael B. McVickar (brief writer) and J. Mark Niermann.

This year’s problem involved a hypothetical appeal to the United States Supreme Court by a woman who was prosecuted for murder in killing her husband. As a result of the prosecutor exercising all ten preemptory challenges to strike potential female jurors, the criminal defendant claimed that her Sixth Amendment guarantee to an impartial jury and the Fourteenth Amendment’s Equal Protection Clause were violated.

Twenty-seven moot court teams participated in the regional round. The winning team will compete against other regional winners in New York City, January, 1989.
FACULTY FOCUS

MY MALAYSIAN SABBATICAL
by Professor Paul H. Brietzke

I spent January through June of 1988 teaching and researching at the Institut Teknologi MARA (ITM) in Malaysia. I had done some research on the relation between law and the distribution of wealth, and I was eager to examine this relationship within a Third World context. I also wanted the experience of teaching, travelling, and living in Asia. My opportunity came when I met Jack Hiller, who was Fulbright Professor of Law at ITM during the 1986-87 academic year, recommended me to colleagues there.

Singapore

On my way to Malaysia, I spent a few days in Singapore. I did all of the tourist things, but I did not much like Singapore. It is very well set up for tourists, especially those who want to spend a lot of money shopping, but it is also one of the world's most efficiently authoritarian regimes. The Prime Minister (who is more like a mayor, the size and population of Singapore being similar to Chicago's) orders people to have fewer children, and they do so; a few years later he orders them to have more children, and they do that too. The only serious matter for public debate in Singapore while I was there was the Clean Public Toilet Campaign. 

"Investigative journalism" consisted of publishing photos and addresses of "dirty" toilets. (They looked quite clean, by the standard of men's rooms in American gas stations.) Singapore may have political problems, but the trains run on time — and the toilets are very clean.

Malaysia

Sandwiched between Singapore and Thailand in Southeast Asia, Malaysia was altogether different and much more enjoyable. Several of my ITM colleagues met me at the airport, and they quickly proved to be the friendliest, most helpful, and most interesting colleagues I have ever had. ITM is located in a small town near the capital, Kuala Lumpur, and I rented a nice small house. Malaysians are extremely courteous, except when they are behind the wheel, and the ten-year-old Peugeot 504 I inherited from Jack was (barely) up to the daily adventure of driving to and from work. Food was another daily adventure: very cheap and very good at the many outdoor stalls, with a wide range of choice among Malay, Chinese, and Indian cuisines.

ITM asked me to teach an American-style Law and Economics class, and to team-teach Comparative Law with Professor Heinrich Scholler of the University of Munich. Heinz and I had taught together in Ethiopia and had written two books together, but he was able to come to Malaysia for only one month. We thus decided to abandon Comparative Law and to offer a variety of faculty and student seminars instead. My Law and Economics students were everything I could have hoped for; most of them would do extremely well at Valparaiso.

Malaysia's New Economic Policy

My Malaysian research resulted in an article, to be published in ITM's journal: "Development and Distributive Justice." In Malaysia and most other countries, economic growth leads to an increased inequality in the distribution of wealth. Most property, contract, corporations, administrative, etc. laws reinforce this trend, and political pressures grow for the redistribution of wealth among regions, ethnic groups, and social strata. Beginning in 1970, Malaysia responded to these pressures with the New Economic Policy (NEP) that is supposed to benefit both the poor and the Malays. The Malays are about 50% of the population. They thus dominate politics, but they lag behind the Chinese (roughly 35% of the population) in private sector economic activities. My overall conclusion is that the legal means chosen to implement the NEP are inefficient and ineffective. Malays gain less than they could under more appropriate laws, laws which also disadvantage the Chinese less and which thus enable everyone to make greater contributions to a genuine development.

At its independence from Britain in 1957, Malaysia fell heir to a "dualistic" economy dominated by foreign-owned corporations, operating largely in the areas of mining and plantation agriculture and by the traditional rural sector of subsistence farming and fishing. NEP policies led to the growth of a third major sector: governmental economic activity. This sector promoted some industrialization and it enriched the Malay political elite, but it does not offer enough economic diversification to foster a broadly-based development. As in the U.S. and many other countries, the Malaysian poor still lack access to the business opportunities and the more productive jobs that serve to reduce poverty over time.

Paul H. Brietzke

The NEP is implemented under administrative laws which leave much discretion in bureaucrats' hands. Administrative law can thus foster inertia, corruption, and political favoritism. To evaluate the administrative laws concerning economic planning, public enterprises, and business licensing and regulation, I developed a "canon of equality." This canon is based on a lively line of Malaysian court decisions which roughly correspond with our constitutional law of an equal protection.

After some elaborations, this canon becomes an NEP "constitution" (similar to an unwritten British constitutional convention) which can be used to eliminate legal irrelevances and contradictions, to otherwise set legal priorities for achieving NEP aims, and to plan for a redistribution of rights in favor of the poor. My article offers many suggestions for improving the "fit" between a reformulated administrative law and a reformed law of property, contracts, and corporations. Particular attention should be paid to improving the law of institutions which enhance the economic opportunities of the poor: in Malaysia, proprietorships and cooperatives. A foreigner like me will not have all or even many of the right answers; my purpose is to encourage Malaysians to re-think the purposes and effects of their legal system.

Constitutional Crisis

The most interesting and saddening aspect of my stay in Malaysia was the
Constitutional Crisis. In October 1987, 106 people were detained—jailed without trial—as alleged threats to national security. Most people concluded that these detentions were a warning to critics of Prime Minister Mahathir's Government, the popularity of which was dwindling rapidly. All public meetings and four newspapers were temporarily banned. Three of the newspapers have reappeared, but their reportage is extremely cautious; a new statute greatly increases the Government's control over the media. Fifty-five detainees were released in February 1988, and seven more were released in June. It was widely rumored that six of those released in June formed a smokescreen for the release of the seventh: a labor leader. The American AFL-CIO had apparently demanded his release as the price for not lobbying in favor of restrictions on Malaysian imports to the U.S.

These detentions took place under the Internal Security Act of 1960, which is patterned on the model used in other former British colonies. Those who supported the Act in 1960 did so to deal with armed Maoist guerrillas. Its use against politicians and leaders of public interest groups was never intended. But the British style of legal drafting—broad grants of discretion, given under the assumption that "good chaps" will not abuse their power—makes a continued misuse of this Act likely. A Government White Paper published in March 1988 attempts to justify the detentions, in terms of reducing the potential for violence and for inciting interracial hatred. Many of the Government's factual allegations are false or dubious. But even if all of these allegations are accepted as true, however, they do not add up to serious threats in a remarkably stable and peaceful country.

Four court cases helped to fuel the Constitutional Crisis. The first concerned one of the detainees: Karpal Singh, Malaysia's leading civil liberties lawyer. The 1960 Act obliges the Government to give written reasons for a detention, and Karpal was released on a writ of habeas corpus after he proved that several of the Government's reasons were based on errors of fact. After a few hours of freedom, Karpal was re-arrested—a move widely seen as demonstrating Government's lack of respect for the judiciary.

The second case, Asian Rare Earth, concerns a joint venture (between a Japanese private company and a Malaysian Government company) which allegedly generates and stores radioactive and other toxic wastes. Local residents seek an injunction against toxic operations, and the hearing of expert testimony has been going on for more than a year. This kind of nascent environmental activism clearly worries the Government, and three of the community leaders who brought the case were among the 106 detained in October, 1987. Other environmentalists were also detained, chiefly because they complained about the extensive logging of Malaysia's tropical hardwood forests. This logging may change the world's weather patterns, and it is accomplished under licenses which benefit a few wealthy politicians and which harm the impoverished people who live off the forests without destroying them.

The third case, UEM, alleged a breathtaking piece of Government corruption. The Government agreed to award a $1.3 billion contract to UEM, to "build" and operate the main North-South Highway. Only some 70 miles of this 500-mile road remain to be built, Government having already built the most difficult stretches, yet UEM receives the right to collect high tolls well into the twenty-first century. The leader of the main opposition party (one of the people detained in October 1987) brought suit, alleging that the contract was irregular and that UEM was owned by relatives of senior politicians. The High Court refused to grant the plaintiff a temporary injunction against awarding the contract to UEM. The Supreme Court reversed in August 1987, feeling that the plaintiff was likely to prevail on the merits. The Supreme Court then ordered a rehearing in January 1988. Karpal Singh was temporarily released from detention, so that he could re-argue the case for the plaintiff. By a 3-2 vote, a different panel of the Supreme Court dissolved the temporary injunction because the plaintiff lacked standing (which is not quite as strange as it sounds, under narrow English rules of locus standi), because his litigation was frivolous and vexatious, and because the Court cannot tell Government how to exercise its power! Government and UEM signed their contract in March 1988, but they were clearly shaken by their narrow escape.

The fourth case, UMNO, was by far the most important. UMNO has been the ruling political party since independence in 1957. In an April 1987 election of party leaders, Prime Minister Mahathir, the leader of "Team A," narrowly defeated the leader of "Team B." (I was unable to identify any differences over policy or ideology, and it seems that Teams A and B are merely rival patronage networks.) Eleven UMNO members, unhappy with the results, sued to void the elections on the basis that thirty UMNO branches (whose representatives' votes apparently accounted for Mahathir's margin of victory) were not properly registered under the Societies Act of 1966. In February 1988, the High Court dropped a bombshell: plaintiff's suit was dismissed because the failure to register thirty branches made the elections and UMNO (and its roughly 500 branches) illegal under the plain meaning of the Act. The remedy plaintiffs sought was thus unnecessary and irrelevant. Imagine the consternation; it was as if the Republican Party and its Convention results were declared illegal in the U.S. Malaysia's Government faced this dilemma because of its attempt tightly to regulate small opposition parties through the Societies Act, in the absence of something like our first amendment freedom of association.

Prime Minister Mahathir felt forced to declare that his power came from the support of a majority in Parliament, many of whom are members of an illegal UMNO, rather than from his leading an illegal Party. The Team B dissidents quickly tried to register a new party, UMNO Malaysia, but they have not been allowed to do so to date. Mahathir's Team A was allowed to register UMNO Baru (new UMNO) by the Team A Registrar of Societies. UMNO Baru has announced that leaders of Team B will not be accepted as members; Mahathir may thus benefit in the long run, by getting rid of dissidents within "his" Party. Parliament passed a law allowing UMNO Baru to claim the old UMNO's assets (which are mostly liabilities) when more than 50% of the old members join UMNO Baru. This may not happen soon, as few people are joining in what is perceived as a cynical political manipulation.
In September 1987, before the four case decisions, Mahathir was already inveighing against the "unpredictable" exercise of judicial discretion: "anyone can bring Government to court," and governmental powers cannot thus be used with "exactitude." There has indeed been a more frequent resort to the courts in Malaysia, and governmental powers cannot thus be used with "exactitude." There has indeed been a more frequent resort to legal processes and to an increased aggressiveness from the Bar. Mahathir apparently decided to act now, before the present King's term expires in 1989. Malaysian kings are elected from among the hereditary rulers (sultans) to five-year terms, and the Sultan slated to become King in 1989 is a former Chief Justice who supports an activist and independent judiciary.

Articles 121 and 145 of the Constitution were thus amended in March 1988, by an ordinary Act of Parliament signed by the King. Parliament, dominated by a Cabinet which is dominated by the Prime Minister (as in Thatcher's Britain), now determines the jurisdiction of the courts. Malaysia had previously subscribed to British notions of a judiciary separate from and independent of Parliament. This rudimentary (from an American perspective) separation of powers, often violated in practice in Malaysia, is now formally abrogated. Also, the Attorney General now determines the venue for instituting or transferring a (prerogative) writ of prohibition against the sitting of the tribunal. The five Supreme Court Justices unanimously granted Salleh's writ, and they were immediately suspended from office. The tribunal met and confirmed Salleh's dismissals, the writ notwithstanding, and a few "safe" judges were appointed to replace those suspended.

A constitutional calm prevails in Malaysia as of this writing, presumably because everyone is afraid of provoking further deteriorations. Having pursued a species of democracy since 1957, Malaysia is lurching towards authoritarianism in ways that concerned me and my ITM colleagues. I felt guilty about going off to Mass at an old church, the weather-beaten tower of which we had long seen from a distance. It turned out we were an hour too early, so we asked where there might be a cafe where we could have a cup of coffee. The person we questioned said there was none within walking distance but laughed and told us to follow him. We soon were having coffee and fruitcake in his home, with his family and a neighbor.

Salleh's alleged misbehavior consisted of a letter he wrote to the King and Sultan, seeking to defend the judiciary against Mahathir's attacks, and partiality he showed toward opponents of the Government. In the only relevant case, UEM, Salleh sided with Government by voting with the majority to dissolve plaintiff's temporary injunction.) The public did not see the six-judge tribunal as impartial; it was headed by the judge who would succeed to Salleh's office. Salleh applied to the Supreme Court for a (prerogative) writ of prohibition against the sitting of the tribunal. The five Supreme Court Justices unanimously granted Salleh's writ, and they were immediately suspended from office. The tribunal met and confirmed Salleh's dismissals, the writ notwithstanding, and a few “safe” judges were appointed to replace those suspended.

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“A Letter from Valparaiso”

Dear People:

Greetings from the School of Law, University of Valparaiso! No, I haven’t gone crazy. I’m teaching this semester in Valparaiso, Chile, in a law school with our name. (Or, more precisely, we’ve got their name—since Valparaiso, Indiana, took its name from this Chilean city in the mid-19th century.) They even call themselves “Valpo”! The best part is that I can use my regular stationery, just adding an accent mark and changing the zip code.

Valparaiso is an astonishingly beautiful and culturally fascinating place to live. (I’m speaking of the one down here, as you probably can guess.) It is Chile’s main port and its hills rise like San Francisco’s almost straight out of the ocean, with only a relatively narrow belt of flat land between. My family and I arrived here at night by sea, after fifteen days on a freighter. Valparaiso appeared to us first as a dark jewel, with a thousand shimmering facets, looming on the horizon. Since then we’ve gotten to know it as a place of pelicans and penguins, of shellfish and fisherfolk, of house-high waves and house-shaking earth tremors. Above all, we are awed by the generous and warm hospitality of the Chilean people.

With so much to do and to suffer, they make room for us in their homes and in their lives. For example, one Sunday recently we climbed one of the hills inhabited by Chile’s poor, by those who have suffered most in recent years. We had hoped to go to Mass at an old church, the weather-beaten tower of which we had long seen from a distance. It turned out we were an hour too early, so we asked where there might be a cafe where we could have a cup of coffee. The person we questioned said there was none within walking distance but laughed and told us to follow him. We soon were having coffee and fruitcake in his home, with his family and a neighbor.

Law school is quite a bit different here. As you probably know, college doesn’t exist in much of the world, so professional studies begin right after high school. Course work for a law degree takes five years here, which gives the student more time to get to know the depth and breadth of the legal system—with many courses in the history and philosophy of law as well as more technical studies. Almost all courses are required. After finishing his or her courses, the student must still write a 100- to 200-page thesis under the direction of a professor and do a six-month internship with a legal aid office before being licensed to practice. I find my students (all fourth
and fifth year) to be exceedingly apt at understanding and questioning everything I say, despite the fact that we're usually discussing American legal concepts and my Spanish isn't perfect.

This semester is a bit unusual, as you probably know, because there is going to be a plebiscite on October 5. The dictator of the past fifteen years is asking for the people's consent to another nine years of his rule. Many students feel a civic duty to work for a return to full democracy rather than to study, so classes have had to be suspended for some time.

Still there is a tragic sense to all the activity in opposition to the dictator. When I was in Chile last (in 1966) the intellectuals and the political parties filled the streets and the classrooms with hope in human solidarity. "Communitarian socialism" seemed just around the corner, and the "new man" (who would finally love his neighbor as himself) seemed a real possibility. The dictator instead imposed laissez-faire capitalism and the pursuit of private gain. Very few people have kept their old ideals.

Even if the dictator loses this battle, I fear he has won the war.

Hasta pronto,
Richard Stith

Editor's Note: After Professor Stith wrote his letter, the long-time ruler of Chile, General Augusto Pinochet, was defeated in the plebiscite on an extension of his term in office. However, the election for his replacement will most likely not be held until late 1989 or 1990.

Editor's note:
The following appeared in the last issue of the law student newspaper, The Forum. We thought you might find it to be of interest.

ORGANIZATIONS DESERVE PRAISE

In our opinion, the student organizations deserve praise for being so actively involved in law school affairs this semester. It seems that most, if not all, of the student organizations have been more active this past semester than they have been in the past few years.

Involvement is the key to success. By being more actively involved, the student organizations have set an excellent example for all law students. We hope this trend will continue next semester and in the years to come.

We are also impressed that more students are becoming involved in law school activities. Although attendance at some functions is still low, it has improved. However, we encourage more students to take advantage of the many activities and organizations at the law school. Even law students can't study 24 hours a day. Take time out one day and attend a function at the law school. Who knows, you may learn something new and actually enjoy yourself! The more involved students become, the better it will be for the school, the students, and the entire law school community as a whole.

Because the student organizations vary in size and focus, there's something for everyone. Also, all of the organizations participate in and provide a variety of activities. These activities include social functions, such as parties and happy hours; academic functions, such as outlining seminars and review sessions; educational events, such as panel discussions and the hosting of guest lecturers; and community services, such as food drives and other activities designed to help those who are less fortunate than we are.

This semester, the student organizations have provided a well-balanced mix of activities. Academically, many organizations have sponsored outlining seminars and review sessions. Phi Alpha Delta (PAD) Law Fraternity has held several review sessions so far this semester, including a Civil Procedure review given by Dean Bodenstein. Similarly, Delta Theta Phi (DTP) Law Fraternity has also held review sessions and Phi Delta Phi (PDP) Law Fraternity plans on holding a future interest review session later this week. The Women's Law Student Association (WLSA) has sponsored an outlining seminar and the Black Law Student Association (BLSA) held a briefing seminar at the beginning of the semester.

Educationally, the student organizations have hosted a wide variety of speakers this semester. Recently, WLSA hosted a speaker on domestic violence. WLSA and the League of Women Voters co-sponsored a discussion on the Referendum Issues on Indiana's November ballot. The Association of Trial Lawyers of America (ATLA) hosted Mark Schmidtke of the law firm Hoeppner Wagner & Evans in Valparaiso. Schmidtke discussed "Aids and the Law." The International Law Society (ILS) held a panel discussion on "Culture, Politics & Law, How the Mix Shapes International Business Relations: The Japanese Example." ILS has also held several short discussion sessions in which faculty members spoke on various aspects of International Law. Finally, the Midwest Environmental Law Caucus (MELC) has hosted several speakers. MELC also took a trip to Pinhook Bog and showed the film, "Are you Swimming in a Sewer."

Community Service activities sponsored by the various student organizations include the Mock Class co-sponsored by DTP, PDP, WLSA, and BLSA. 2L Mary Ryan orchestrated the event. BLSA, in conjunction with the Admission's Office, has also helped recruit students at the University of Chicago and Chicago State.

For all of the abovementioned events and activities, as well as the events not mentioned, we applaud the student organizations for being so active this semester.
Most of you have not had an opportunity to visit the new law school building. That is truly unfortunate, for it has made a radical difference not only in terms of space, but in the entire “personality” of the School of Law. I have been fortunate enough to witness this transformation first hand. Along with the vast majority of law alumni, I spent my tenure as a law student in the old building. I also put in my first couple of years as a member of the administration under the old roof. Consequently, I am in the position of being able to look at the new facility in terms of the “good ol’ days.” Compared to what we have become, those days really weren’t so good.

Sure, the faculty is as impressive and personal as always, and the legal education is as strong as ever. But let’s face it, the old building was cramped. It was not much more than a place to go to class. Student services, co-curricular functions and outside service to the legal profession were severely restricted due to space limitations. Those days are gone. In the three short years we have been operating under the new copper (you do remember the University architectural style: red brick and copper roofs?) we have been magically and wonderfully transformed into a full-service law school. While the classroom teaching our students receive continues to be of the highest quality, the new facility has allowed us to enhance the overall legal education experience.

By way of a visual introduction to Wesemann II, the following pages contain a number of photographs of the building. The physical differences between Wesemann I and Wesemann II are substantial. The old building had two classrooms, the courtroom and one seminar room. In total, these rooms held 230 seats and took up 3,975 square feet. Now, we have four classrooms, a courtroom and three seminar rooms, totalling 534 seats and 14,788 square feet. Faculty offices have gone from 2,374 square feet to 6,523 square feet. Administrative and general student areas have increased from 6,353 square feet to 25,296 square feet. The library expanded from 13,278 square feet to 26,011 square feet. Overall, the old building totalled 25,980 square feet. The new Wesemann Hall totals 76,300 square feet. I find it fascinating that the new library, alone, is larger than the old building.

I wish there was a way to measure the overall quality, service, strength and reputation of a law school in a manner similar to measuring physical space. In terms of physical plant, we have improved by almost 200%. If the intangibles could be measured as easily, you would see that they, too, have improved by a similar margin.

There is a seat in the library for just about every law student. Student organizations have proliferated in number as well as activity. The placement operation has grown to the point where on-campus interviews are commonplace (all held within the Career Services and Alumni Relations Suite). In fact, one prominent law firm in Indiana recently held a reception for the students in the Duesenberg Commons. Area attorneys have come to rely on the law school as a site for continuing legal education programs (on average, there is one CLE seminar held every week). There is a committee of faculty and students who arrange for art shows within the building (this program became so popular that some regional artists were disappointed when their works could not be fit into the schedule). The number of special events, lectures and court visits has increased. All of these activities are easily accommodated within the building (the largest classroom seats 160) with minimal interference to the regular schedule.

In short, we have been provided with an outstanding environment for legal education and have been quick to take advantage of this opportunity. Thanks in large part to the new facility, the School of Law has improved its competitive position among law schools and, more importantly, has become a more active and visible member of the legal profession. Credit is due to every member of the law school community; yet, we are not about to become complacent. The enhancement has just begun to gather momentum.

As the person responsible for the law school development program, I think that it is important for you to discover as much as you can about the “new” law school. The more you learn the more impressed you will be with your alma mater. I hope that your increased pride in the Valparaiso University School of Law will lead to your increased support.
The reference area, on the main level of the library, with open staircase and library skylight in the background.

The student computer room of the library, which houses word processors, computer assisted legal research terminals and a personal computer.

Students meet in one of the two conversation groupings in the Duesenberg Commons.

The Stride Courtroom, being used during a recent Moot Court practice.
A view of the building from the oak grove. Graduates from earlier years may remember the "bull pen," pictured in the foreground.

Dean Bodensteiner teaching Civil Procedure in Classroom A (one of four classrooms).

The main entrance, as viewed from Greenwich Street.
THE DEEP MEANING OF TORT

by Jayme Walker, 3L

Is tort law "just like love?"
To the extent that one cannot explain tort law in terms of something other than itself, tort law is like love, for to explain love in terms of something external to love is to mistake the very nature of love.

This was how Professor Ernest Weinrib ended his lecture November 14 to a capacity audience at Wesemann Hall. Weinrib, a member of the Faculty of Law at the University of Toronto, was the guest lecturer at the third annual Monsanto Lecture on Tort Reform. Weinrib's lecture was entitled "The Specific Morality of Tort Law."

The annual lectures are endowed by the Monsanto Fund. The gift enables Valparaiso University School of Law to invite distinguished scholars and professionals to critically reexamine the deep theory of tort law as it has evolved in this country, and to explore avenues for tort reform.

Previous lecturers were Professor George L. Priest of Yale Law School, and Professor Robert L. Rabin of Stanford Law School.

Weinrib's lecture fulfilled the purpose of the Monsanto lecture series by exploring the deep theory of tort law. Weinrib began his lecture by asking: "How does one come to grips with the morality, if any, of tort law?" An analysis of the issue of what morality arises out of the nature of tort law followed.

Essentially, Weinrib's analysis flowed through the four parts of his lecture. These parts consisted of an ascertaining of what tort law is — "If we talk about the morality of tort law, of what are we talking about — what is it that has this morality?"; contrasting the conception of doing and suffering conceived of as a certain kind of unity, as established in the first part of his lecture, with an economic conception of tort law as perceived by individuals such as Richard Posner; and outlining how the unity of doing and suffering are expressed in the concepts of negligence law; and making theoretical observations about the thesis presented.

At the outset of his comments, Weinrib distinguished tort from accident, and asked the audience to accept the concept that tort law is a mode of ordering. Once this assumption is accepted, the next task is to determine what kind of ordering tort law is. In determining the kind of ordering involved in tort law, attention must be drawn to the essential elements of tort law — remedial procedure and causation.

What is to be done with these two basic elements of tort law? At this point, Weinrib pondered how we conceive of the mental representation of tort law by noting that two different definitions of conception exist: 1) the psychological aspect of experience, and 2) what is held together in the mind as a coherent whole. The first definition of conception represents a conventional unity. The second meaning of conception describes an intrinsic unity.

How do the two essential elements of remedial and causation unite in tort law — are they a conventional or intrinsic unity? Weinrib asserted that if tort law is a mode of ordering, we must infer an intrinsic unity, which is coherent, and thus superior to a conventional unity.

In the next phase of his lecture, Weinrib asked his audience to regard the doing and suffering of injury as a normative unit, indicating his belief that this unit captures the specific morality of tort law. Under this conception, doing and suffering are correlative to each other; thus, each has equal status in relationship as a whole. Within this unit, the doing and suffering are not in isolation because the plaintiff and the defendant are always linked. Both the doing and the suffering must be acknowledged, and, as a result, there is both a unity between the plaintiff and the defendant and a progression from the initial action. The symbol of this unity is the element of damages.

Although Weinrib cut short his comments on the second portion of his presentation, Weinrib did convey the notion that "wealth maximization, at least as Posner conceives of it, cannot account for why the plaintiff received the precise amount that the defendant pays." According to Weinrib, Posner's position cannot reflect the unity of tort law. Therefore, Posner has not produced a theory of tort law at all.

Next, Weinrib discussed how negligence law is a normative unit that embraces both the defendant and the plaintiff as correlative. Negligence law exemplifies the "intrinsic unity of the relationship of doing and suffering," Weinrib said. The concepts of the act, the requirement that there be misfeasance rather than nonfeasance, the requirement of factual causation, standard of care, proximate causation, and duty were related to the concepts of doing and suffering as a normative unit. Weinrib demonstrated how these concepts are more indicative of the concrete requirements of doing and suffering.

In closing, Weinrib explored the theoretical arguments surrounding his theory by addressing criticisms of his ideas made by other scholars in recent law journals.

The full text of Professor Weinrib's lecture will be printed in the Valparaiso University Law Review later this year.

L-R: Richard Duesenberg, Arlena Mason, Ernest Weinrib, John Mason, Ivan Bodensteiner, Bruce Berner, Phyllis Duesenberg.
ALUMNI IN FOCUS

SECTION 2036(c) CHILLS FREEZES BUT LEAVES GRITS HOT

by Robert Breshock, '82

Robert Breshock is a manager in the Chicago Tax Division of Arthur Andersen & Co. specializing in family wealth planning.

Mr. Breshock has worked closely with high net worth families and executives implementing plans to insure transition of control of closely held businesses, to minimize income, estate and generation skipping taxes, and to provide guidance on the complexities of our tax environment.

Bob graduated from Wabash College in 1979 and Valparaiso University School of Law in 1982. In 1984, after two years of law practice, he joined Arthur Andersen & Co. He is admitted to practice law in Illinois and Indiana.

The Revenue Act of 1987 added §2036(c) which was intended to limit severely the opportunities to minimize estate and gift tax on the transfer of family wealth to younger generations. The vague and perhaps intentionally broad language contained in the new provision made its scope unclear. The passage of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) has helped to crystallize the ambit of §2036(c) and has turned off the legislative heat on some freeze techniques. One such technique which offers significant benefits is the grantor retained income trust (GRIT).

The GRIT technique involves the transfer of property into a trust and the retention by the transferor (grantor) of the right to the income from the property for a term of years. The principal or remainder interest passes to beneficiaries designated by the grantor at the lapse of the income term. By doing this, the grantor has made a gift of the remainder interest. As a result of the retained income interest, the value of the remainder interest is discounted under present value concepts, thereby significantly reducing the taxable gift. If the grantor survives the retained income term, the discount inherent in the remainder interest valuation (the present value of the income interest) plus any post-transfer appreciation escape estate and gift taxation. The GRIT not only freezes the value of the transferred property but it allows leveraging of the unified credit by using a fraction of the credit which would normally be required to immunize the transfer from gift tax.

HOW IT WORKS

As the name "grantor retained income trust" suggests, the grantor must establish a trust in which he has retained an interest in the income of the trust property for a specified time. For the technique to succeed and move the trust assets out of the grantor's estate, a completed gift of the remainder interest must occur. To help ensure this, the trust must be irrevocable, making the assets unreachable by the grantor or his or her creditors. The trust should provide that the trustee must distribute income only to the grantor and that such distribution occur at least annually. Also, the trustee should be prohibited from making principal distributions to the grantor. Not only does this help support the completed gift of the remainder interest, which gets the property out of the grantor's estate, but it makes valuation of the remainder interest easier and is necessary (as will be explained below) under the new requirements of TAMRA.

Prior to TAMRA a grantor could select any term of years for his or her income interest. Since the valuation of the income interest is based on present value concepts, the longer the term, the larger the value of the income interest and, conversely, the smaller the value of the gifted remainder interest. TAMRA has limited the GRIT's ability to suppress the gifted remainder value by imposing a 10-year limit on the income term of years. I.R.C. §2036(c)(6)(B)(f). GRITs with a longer term will lose the benefit of the discounted gift value upon the creation of the GRIT and the potential tax-free transfer of post-creation appreciation.

While it is important to select an income term which avoids the application of §2036(c), there are other important considerations. In selecting the income term, consideration should be given to the grantor's cash needs, his or her life expectancy, and the anticipated appreciation of the trust property. Perhaps the most critical of these considerations is the grantor's life expectancy. The freeze benefits of the GRIT will not be obtained if the grantor dies within the income term. Under §2036(a)(1), the trust will be included in the grantor's estate since he has died with a retained income interest. If the grantor's cash position is strong, the income term should be no longer than that needed for the anticipated appreciation to occur since a longer period increases the mortality risk.
tables used to value remainders, life interests, annuities and reversions in order to reflect more accurately interest rates and mortality. Rather than assume a 10% interest rate, an interest rate equal to 120% of the federal mid-term rate for the month in which the valuation falls is to be used. I.R.C. §7520. The new rates will be effective for interests valued after the first day of the sixth calendar month beginning after the date of enactment (November 10, 1988). For the next few months, the 10% tables still apply. Of course, depending on the federal mid-term rates, the new provision may be more advantageous than the current rate. For example, 120% of the November mid-term rate is 10.13%. If this were the applicable valuation rate, the remainder interest would be valued even lower than if valued under the current 10% rate.

**QUANTIFYING THE BENEFIT**
The following example should quantify the transfer tax savings of the GRIT and illustrate the unified credit leveraging mentioned earlier. Assume the grantor transfers $1 million of property into an irrevocable trust, retains an income interest for 10 years and designates his children as beneficiaries. Also, assume the grantor has the full unified credit available ($192,800) which will shelter up to $600,000 of transferred value. Upon the transfer, the grantor has made a taxable future interest gift of the remainder interest. Because the gift is of a future interest, it does not qualify for the $10,000 annual exclusion. Consequently, the full remainder value is subject to tax. The value of the remainder based on the 10% tables is $385,000. The grantor is required to file a gift tax return reporting the $385,000 gift. The gift tax on this amount, assuming no prior gifts, is $116,700. No gift tax will be paid, however, since it will be offset by the available unified credit.

Assume further that the grantor survives the income term and the trust property does not appreciate. The grantor has passed $1 million to his children utilizing only $116,700 of unified credit and paying no gift or estate tax. Moreover, he has preserved $76,100 of unified credit which could have otherwise been utilized by a transfer of this size. Had he gifted the $1 million outright or valued with this amount in his estate, the transfer tax would be (assuming no prior gifts) $345,800. This amount fully utilizes the unified credit of $192,800 and requires the payment of $153,000 of tax.

Obviously, if the trust property appreciates, the tax savings is even greater. If the property were to appreciate at a 7% rate over the 10-year term, its value would almost double to $1,167,150. Gift or estate tax on this amount, assuming no prior gifts, is approximately $766,020. In this case, the GRIT would save approximately $649,320 in transfer tax.

**"NO HARM IN TRYING"**
A compelling aspect of this technique is its minimal downside. At worst, the technique leaves a grantor in the same estate tax position he or she would have been in had the GRIT not been implemented. The key to obtaining the GRIT benefits is whether the grantor survives the income term. As mentioned above, if the grantor dies within the specified term the trust property is included in his estate at the date of death value. However, if this occurs, the grantor is given credit for taxes paid and/or unified credit used upon the funding of the trust. Due to this restoration of the credit and taxes paid, the grantor's estate tax situation is the same as it would have been without the GRIT. This is not to say that there are no costs to a GRIT. The grantor has incurred the costs of tax planning, document preparation and trust administration. Also, the grantor has lost flexibility regarding his use of the trust property since it has been placed within an irrevocable trust.

Another downside consideration is the potential estate liquidity problem. Since the trust assets pass to the beneficiaries under the trust terms and are not part of the probate estate, the assets generally are not available to satisfy the estate tax liability they create. This could result in a distribution inequality or a cash hardship to the estate. Prior to TAMRA, some commentators suggested drafting the GRIT with language terminating the trust if the grantor died within the income term and reverting it to the grantor or the grantor's other dispository plans as a way around the inclusion and liquidity problems. Under TAMRA's new GRIT provisions, which will be set forth more fully below, a GRIT will only receive trust amounts determined solely with reference to the income from the property held in trust. I.R.C. §2036(c)(6)(B). A reversion in the event of death within the income term might be construed as a right relating to principal and, consequently, not as a right determined solely with reference to the income from the trust property. Therefore, the reversion mechanism may not be advisable. The purchase of insurance providing for the amount of projected tax exposure is one way to minimize this difficulty. Nevertheless, the GRIT may be as close to a "no harm in trying" technique as there is in the existing estate and gift tax environment.

**SECTION 2036(c)'S GRIT EXCEPTION**
New §2036(c) creates deemed gifts upon the transfer of a retained interest during the transferor's lifetime (i.e., the passing of the remainder interest upon the expiration of the income term). I.R.C. §2036(c)(4). This provision would treat the expiration of the income term of a GRIT as a taxable gift valued at the date of expiration. Thus, the benefit of the discounted gift value upon the creation of the GRIT and the potential tax-free transfer of post-creation appreciation would be lost. Fortunately, an exception has been granted to GRITs. Section 2036(c) will not apply to retained "qualified trust income interests." I.R.C. §2036(c)(6)(A). Qualified interests are those where (1) the right to receive income is determined solely by reference to the income from the property held in trust; (2) such right is for a period not exceeding 10 years; (3) the person holding such right transferred the property to the trust; and (4) such person is not a trustee of the trust. I.R.C. §2036(c)(6)(B).

The above requirements are consistent with the elements of a conventional GRIT and do not make GRITs less attractive. Even under the 10-year term limitation, a substantial discount is provided under the IRS tables (61.5% at 10 years). Also, the 10-year term is a sufficient period of time over which to realize appreciation. The value of the trust assets will nearly double in 10 years with only 7% appreciation. In fact, trusts of less than 10 years were popular under prior law. This was due most likely to the grantor's life expectancy and the anticipated appreciation.
CONCLUSION
Despite the recent inroads made against many estate freeze techniques, there remain opportunities to minimize transfer tax upon the passage of wealth to younger generations. One remaining technique is the grantor retained income trust (GRIT). The features which made the GRIT a popular estate planning technique before tax reform have not been lost to the new anti-freeze measures. And since GRITs have been specifically addressed under §2036(c), this technique can be brought to clients free from the uncertainty surrounding other freeze techniques. So if the chilling of freezes has left your estate planning cold, consider warming it up with GRITs.

IN MEMORIAM

With deep sorrow and regret, we report the loss of Karen A. Marencik, a 1985 graduate of the School of Law. Karen was an outstanding law student and a pleasure to know. It is an honor for this law school to have her as an alumna. Immediately after graduation, she clerked for Judge Thomas G. Wilson, a federal magistrate for the United States District Court of Florida, Middle District. In memory of Karen, Judge Wilson entered the following Memorial Order.

In accordance with the wishes of Karen’s family, memorials may be made to the Cancer Research Program of the American Cancer Society, in Karen’s name.

IN RE:
KAREN A. MARENCIK

MEMORIAL ORDER
Karen Marencik, my former law clerk, died last week at the age of 28 as a result of complications from her battle with leukemia. Because of her dedicated service, I recommend that this Memorial Order be adopted as part of the permanent records of this Court.

Karen came to this Court in May 1985 with an outstanding scholastic background. She had compiled an excellent academic record at Indiana University. She had attained this record, moreover, while competing intercollegiately for Indiana’s women’s golf team. Karen was such a skilled golfer that she received the Big Ten Medal of Honor in 1982.

After graduating from Indiana, Karen attended Valparaiso University School of Law. Again, she excelled. She graduated near the top of her class and was on the Editorial Board of the Law Review.

Karen quickly established herself as an outstanding law clerk after being hired in May 1985. Her superior intellectual abilities were reflected in the quality of her work. Moreover, she worked long hours and was extremely productive. All the while, her quiet, easy-going manner made her a pleasure to be around.

In May 1986, Karen was discovered to have a form of leukemia. Following surgery and then chemotherapy in Houston, Texas, Karen returned to work in August 1986. Despite further chemotherapy, Karen resumed her typical long working-hours. Her records show that she regularly worked until at least 7:00 p.m. and frequently worked approximately 50 hours per week. Moreover, she carried out her responsibilities with her usual pleasant manner, completely concealing the physical and psychological pain that her disease and its treatment had inflicted upon her.

In September 1987, Karen learned that her chemotherapy had not been successful. Accordingly, she was forced to go to Houston for even more intense treatment. I was in regular contact with her during that period, and I marveled at her courage, her determination, and her positive spirit.

Following completion in September 1988 of her series of treatments in Houston, Karen returned for a visit. We spoke of her anticipated return to work within a few months. Tragically, it is not to be.

Because of the inspirational courage and determination she has shown to all who knew her, and the dedication she has displayed toward our work, Karen has brought honor upon this Court. This Court, in turn, should honor her. Accordingly, I recommend that the Clerk be directed to maintain this Memorial Order in the permanent records of this Court.

Respectfully submitted,

THOMAS G. WILSON
UNITED STATES MAGISTRATE
DATED: JANUARY 5, 1989

APPROVED AND ADOPTED:

WILLIAM TERRELL HODGES, CHIEF
UNITED STATES DISTRICT JUDGE
DATED: JANUARY 5, 1989
CAREER WEEK

by Gail Peshel, Director of Career Services & Alumni Relations

The Career Services Office held a Career Week at the beginning of the fall semester. Fifteen informational sessions were presented to students by panels of School of Law alumni and friends. SUCCESS IN SUMMER EMPLOYMENT provided background on various types of clerkships and the duties involved. The Class of '89 speakers, Tim Baker, Jon Irwin, Daneene Mitchell, Kingsley Regnier, Paul Risema and Brad Soos, also provided suggestions on how to obtain clerkships.

A RESUME AND COVER LETTER PREPARATION session was presented by Marilyn Nickell '87, Dykema, Gossett, Goodnow & Trigg, and Mark Krmamic, an attorney with Barnes & Thornburg. Dr. Stewart Cooper of the V.U. Counseling Center discussed ways to cope with stress and thus do better while participating in classroom discussion and taking exams in HOW TO MAXIMIZE YOUR LAW SCHOOL EXPERIENCE.

Douglas Bates, '87, Levin & Funkhouser, Robert Clark, '79, Henderson, Daily, Withrow & Devoe, and Douglas Small, Barnes & Thornburg, conducted an INTERVIEW TECHNIQUES session. Two DRESSING FOR OBJECTIVES sessions were held. David Shurr of David's in Valparaiso, conducted a session for men, and Mary Jane Cross of Image Development, conducted a session for women.

Ed Nielsen, '73, Pretzel Stouffer, and Don Seberger, '80, Jenner & Block, discussed Cook County courts, pleading preparation, and ways in which practicing in Cook County may differ from practicing in other communities in CHICAGO PRACTICE. INDIANA PRACTICE was discussed in a presentation by Indiana State Bar Association attorneys, Dan Byron, McHale, Cook & Welch, Rex Henthorn, Harris, Hendon & Harris, P.C., and David Miller, Chief Deputy, Indiana Attorney General's Office.

Since each year roughly one third of the law graduates nationwide accept positions outside the private law practice, the rest of the sessions were directed toward identifying career choices. The speakers were: Jack Hires, '83, V.U. School of Business professor; Bill Glynn, '84, Callahan Publishing Company executive; Mary Nimz, '86, National Legal Center for the Medically Dependent and Disabled, Director, Brian Popp, '84, Deutsch & Co., accounting firm attorney; Randall Vogelzang '77, GTE corporate attorney; Charles MacKinnon, '79, Zenith Electronics corporate attorney; Kenneth Roeh, '52, Mercantile National Bank Vice President; Stephen K. Todd, '70, U.S. Steel Corporation Senior General Attorney; and Carol Ann Bowman, '77, Whiteco Industries Attorney.

Government positions were presented by: Martin Baumgaertner, '74, Merit Systems Protection Board Regional Director; Charles Deible, '73, Hammond City Attorney; Michael Feikes, '86, U.S. Customs; Diane Kavadias Schneider, '82, Lake County Juvenile Court Executive; Charles Kenneth Wilbur, '89, U.S. Defense Department Summer Intern; Jayme Walker, '89, U.S. Treasury Department Summer Intern; Ross Springer, I.R.S. District Counsel; Dennis Hyten, Tom Flynn, and Kevin Ilia, F.B.I.; Cornell Boggs, '85, U.S. Justice Department and Greg Hafter from Legal Services.

I would like to convey my sincere appreciation to these alumni and friends of the school for sharing their time and expertise.

JOB FAIRS

Job Fairs are time and cost efficient for both law firms and law students. Law firms are able to interview students from a number of schools at one convenient location in one day since a number of schools usually participate in each job fair. Students are provided the opportunity to interview with as many as eleven firms in one day.

The School of Law participated in seven job fairs this fall. Students had the opportunity to talk with a total of 261 firms, corporations and agencies at job fairs held in Chicago, Indianapolis, Washington, D.C., Kansas City, and Cleveland.

BARNES & THORNBURG RECEPTION

Indiana's largest law firm, Barnes & Thornburg, hosted a reception at the School of Law October 12th for students interested in the firm. The reception was attended by attorneys from Barnes & Thornburg offices, law faculty, administrative staff and interested students. It provided a good opportunity for students to talk with Barnes & Thornburg attorneys in an informal setting.

ON-CAMPUS INTERVIEWS

On-campus interviews continue to increase each year. This past fall we had a record number of on-campus interviews including firms from the District of Columbia, Illinois, Indiana, Kentucky, Michigan, Missouri and New York.

ALUMNI SUPPORT

The alumni association has expanded its programs to include substantial funding for the Amicus, alumni receptions in conjunction with bar meetings, CLE programs, and sole funding for the Alumni Directory and its updates.

Despite varied career paths taken after law school, we can all harken back to our law school experience at V.U. For that reason your alumni association has devoted substantial personal as well as monetary resources toward numerous student service activities such as the emergency loan fund, entering class orientation, free coffee during finals, Christmas caroling, an end-of-the-year picnic, lunches for on-campus interviewers, and a four-color brochure providing information for employers, as well as alumni directories.

Since the only source of funding for the Association is its annual dues, we need your help. Please send your dues payment to the Law Alumni Association today, in care of Gail Peshel, Valparaiso University School of Law, Wesemann Hall, Valparaiso, Indiana 46383.

1989 Dues: Classes of 1986-88 $20; all other classes $30.
1939

F. Jack Foersterling retired in 1980 as Senior Vice President & Director of Lincoln National (INS.) Investment Mgmt. Co. Jack also served as Vice President of Chicago Title & Trust Co., and is currently a director of three National Mutual funds. In addition to being an investment counselor, Jack is a private investor and a member of the Chicago, Illinois, & American Bar Associations.

1951

Orval Anderson has relocated to Jensen Beach, Flor.

1958

Paul Melchert has relocated to Waconia, Minn.

1965

Mark D. Olson has joined the firm of Holleb & Coff in Chicago, Ill.

1972

Carl Krack has informed us his Medford, Oregon firm name has been changed to Kellington, Krack, Richmond & Blackhurst.

1973


1974

Tim Anderson relocated to Chippewa Falls, Wisc. from St. Paul, Minn. in April 1988 and is a partner in the firm of McKinley & Anderson. Tim and his wife Sonia have a son Franklin, age 3 and are expecting their second child in February, 1989.

1976

Bill Morris has been managing partner of his firm Peterson, Nelson, Johans & Morris in Nebraska, since 1984. Bill and Cindy are the proud parents of Whitney Ryanne, born July 5, 1988. (Anyone interested in meeting and skiing in Summit County, Colo. in March ’89 should give Bill a call 402/488-0985.)

Barbara Ruhe completed her three year term on the Lutheran Human Relations Association of America Board at the fall meeting.

1977

Marcia Gienapp was featured in a Vidette Messenger newspaper article in October. In the article, Marcia recommended pre-planning and basic estate planning for senior citizens.

1978

George C. Burgasser was appointed in June of this year as a Special Attorney with the United States Justice Department in Washington, D.C. He is working in the Criminal Division with the National Obscenity Enforcement Unit as a Trial Attorney for the Federal Obscenity Task Force. For eight years prior to his appointment of the Justice Department he was the Targeted Crime Coordinator and an Assistant District Attorney for Niagara County, N.Y. George and his wife Becky have two sons, Aaron (8) and Jonathan (3).

1979

Dierdre A. Burgman received an award for “outstanding service” from the New York County Lawyers’ Association. Dee was elected Chairperson by the law school Board of Visitors at their November, 1988 meeting.

Linda Weiss-Malik is now a fashion designer— in fact— her work is included in the November issue of Vogue Magazine!
1981
Leslie H. Reed has relocated from Lee's Summit, Missouri to Woodstock, Ga.

1982
Roland Meisner has recently transferred to the Criminal Law Division to work as a prosecutor in the Army JAGC at Fort Carson, Colo.
James Hodson has left the law firm of Stuart & Branigin and has established his own law firm, Hodson & Herr, in Lafayette, Ind.

1983
Joseph Boyle has relocated from Akron, Ohio to Chicago, Ill.
Michal Clark and his wife Sharon have a son Ryan, age 3 and a new daughter, Megan, born October 27, 1988.
Frances C. Gull has recently been appointed Master Commissioner for Allen Circuit Court and is handling the Family Court docket. Frances and her husband Allan, have 3 children, Cody, age 4, Christina, age 2 and the newest member, Austin, born July 3, 1988.
Mark P. Dvorscak has relocated from Hammond, Indiana and is now practicing patent law with Watts, Hoffmann, Fisher & Heinke in Cleveland.
Victor Fitz has relocated from Caro, Mich. to Muskegon, Mich.
William McMaster has relocated to Indianapolis, Ind.
Joy Lanell Phillips has relocated from Lakeland, Fla. to Baltimore, Md.
Paul Vance and his wife, Beth, have purchased their first home in Kenmore, N.Y. Paul continues to practice matrimonial law in Buffalo at the firm of Fiorella, Aman & Vance. Paul and Beth have two daughters, Tara, 5 and Lauren, 4.
Karen S. Walker recently became Staff Attorney for the Fort Wayne, Ind. Metropolitan Human Relations Commission. In addition, this past summer, Karen served as a Delegate to the Democratic National Convention in Atlanta.
Randal J. Wray has relocated to Frankfort, Ill.

1984
Janet F. Bowermaster has relocated from Champaign, Ill. to San Diego, Calif.

Voyle A. Glover is practicing law in Schererville, Ind.
Fran Jagla has expanded her duties and has become a General Counsel for Miles Laboratories in Mishawaka, Ind.
Randy Zromkowsk and his wife, JoEllen, are pleased to announce the birth of their son, Andrew "Drew" Michael, born August 27, 1988 at 3:11 p.m. weighing 7 lbs. 12 oz.

1985
Marc Krimen is an associate with Knepper & Moga in Chicago, Ill.
James & Nancy Milstone, '86, are pleased to announce the birth of their son, Christopher James, born May 28, 1988.

1986
William R. Buckley has relocated to Alsip, Ill.

Mary Nimz

Mary Nimz has been promoted to Chief Staff Counsel for the National Legal Center for the Medically Dependent & Disabled, Inc. in Indianapolis, Ind.
Danny M. Smolnik was nominated for Director of Aid Association for Lutherans by Branch 1943, Simsbury in Hartford, Conn.
John R. Tribbet is a partner in the Crawfordsville, Ind. firm of Goebel McGaughhey Soshe & Tribbet.
Greg Bolduc & his wife, Desma, are pleased to announce the birth of their son, Neil, born May 9, 1988.

1987
Robin Klopfenstein has joined the firm of Thorne, Grodnik & Ransel in Elkhart, Ind.
John Mark Vouga has been appointed a Deputy Prosecuting Attorney of Porter County, Ind., as of September 19, 1988.

1988
Laurie Bigsby has associated with Hardig, Lee and Groves of South Bend, Ind.
Esther Droge is working for the law firm of Popelka, Allard, McCowan and Jones in San Jose, Calif.
Christine Harris is clerking for Federal District Judge Allen Sharp in South Bend, Ind.
William Koch is clerking for the Honorable George J. Nicola in New Brunswick, N.J.
Timothy L. Tromp of Lake Odessa is now a licensed and practicing attorney in the State of Michigan, as a result of his passing the Bar.
Vytais J. Urba was sworn in as Assistant State's Attorney in Ft. Myers, Fla.

DEAN CICHOWSKI ASSUMES DEVELOPMENT RESPONSIBILITIES

In addition to his duties as Assistant Dean and Editor of the Amicus, Curt Cichowski has been appointed to coordinate development and alumni activities for the School of Law. As a part of a new arrangement, Curt will serve on the staffs of the School of Law, and the Department of Development and Public and Alumni Affairs. His new responsibilities include coordinating School of Law fundraising and planned giving, and alumni activities, including Homecoming reunions, alumni awards, and receptions.

Dean Cichowski began his career with the School of Law in 1982 as Director of Admissions. He graduated from Carroll College, Waukesha, Wisconsin in 1978 and received his J.D. from Valparaiso University in 1981. Dean Cichowski also teaches a seminar on Copyright Law and New Technology.
The annual law alumni homecoming dinner was held at the Strongbow Inn in Valparaiso. Hot and cold hors d'oeuvres and a gourmet turkey dinner, as well as cash bar, were enjoyed by everyone in attendance. Alumni shared new experiences with former professors and remembered old times with laughter.
School of Law Activities

January 11-17  Career Services Spring Career Week
January 17-18  Fourth Annual Institute on Law and Pastoral Ministry
                Topic — Healing the Family
January 25-26  Scholar-in-Residence Program
                Professor Emeritus Harry Pratter
                Indiana University School of Law
                Topic — Recent Trends in Legal Theory:
                Their Impact on Students
February (date to be announced)  Supreme Court of Indiana to hear oral arguments
                                    at Wesemann Hall
February 4  Symposium on Church-State Relations
                sponsored by the Christian Legal Society and
                the Federalist Society
February 20  Indiana Court of Appeals to hear oral
                arguments at Wesemann Hall
March 30  Faculty Inaugural Lecture
                Professor and Associate Dean Bruce G. Berner
April 3-8  Law Week
                April 5 — Law Day Luncheon
                April 6 — Roast
                April 7 — Alumni Association "Beer & Brat Bash"
                April 8 — Barristers' Ball
April 12-13  Sixth Annual Edward A. Seegers Lecture
                Professor William Twining
                University of London Faculty of Law
                Topic — Reading Law
April 20-21  Fair Housing/Fair Lending Legal Seminar
                co-sponsored with the U.S. Department of
                Housing and Urban Development
April 22  Annual Law Review Banquet
May 18-21  Graduation Events
                May 18 — Dean's Reception for Graduates
                May 21 — Baccalaureate, Chapel, 10:30 a.m.
                Commencement, Chapel, 1:30 p.m.
                Reception, Wesemann Hall, 3:00 p.m.

Alumni Activities

April 7  Law Alumni Association Spring Meeting
                Board of Directors Meeting — 1:00 p.m.
                Second Annual "Beer & Brat Bash" — 3:30 p.m.
April 13 (tentative)  Alumni Reception
                Indiana State Bar Association Spring Meeting
                Adams Mark Hotel, Indianapolis

Continuing Legal Education Programs

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Alumni News

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 _____________________________

________________________________________________________________________

Please detach and return to
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.