

*Summer 2019: Tribute to Valparaiso University Law School (1879-2019)*

### Number 108

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## NUMBER 108

*The American Jury: A Justification*, by United States Supreme Court Justice Tom C. Clark, probably represents the first *professional* article edited by *nonprofessionals* at Valparaiso University School of Law, in Valparaiso, Indiana.<sup>1</sup> The editors were second-year law students at Valparaiso University School of Law. The year was 1966. The publication was *Valparaiso University Law Review*, Volume 1 – the 108th student-edited legal periodical in the United States.<sup>2</sup>

It's true that a good idea tends to endure.<sup>3</sup> And "institutions tend not merely to endure, they expand."<sup>4</sup> But all good things must come to an end. A wise man once said, "Law schools, like people, do not have full control of their destinies. That's in another realm."<sup>5</sup> Last year, 140 years after the birth of Valparaiso University Law School, there were 238 law schools in the United States.<sup>6</sup> By the end of next year, there will be 237. Yesterday, 53 years after the birth of *Valparaiso University Law Review*, there were over 200 student-edited legal periodicals in the United States. Tomorrow, there will be one less.<sup>7</sup>

### THIS ISSUE

When we embarked on the early stages of publishing Volume 53, we did not expect for it to be the final volume of *Valparaiso University Law Review*. Of course, when we showed up at Wesemann Hall to begin our legal education at Valparaiso University Law School, we did not expect to be among the last crusaders to walk these halls as law students. But when we exit these halls for good, we will stand tall with the students and educators who came before us and who depart with us. We will cherish our time here, and we will continue to show the world that this small

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<sup>1</sup> Tom C. Clark, *The American Jury: A Justification*, 1 VAL. U. L. REV. 1 (1966). These editor's comments have been adapted from the original editor's comments of the *Valparaiso University Law Review*, Volume 1. See *Editor's Comments*, 1 VAL. U. L. REV. v (1966).

<sup>2</sup> *Editor's Comments*, 1 VAL. U. L. REV. v, v (1966).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Michael Swygert, *Celebration and Mourning: The Valparaiso University School of Law*, 53 VAL. U. L. REV. 868 (2019).

<sup>6</sup> *ABA-Approved Law Schools*, ABA, [https://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools/](https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/) (listing 203 ABA-approved law schools and 3 provisionally approved law schools); *Non-ABA-Approved Law Schools*, LSAC (2019), <https://www.lsac.org/choosing-law-school/find-law-school/non-aba-approved-law-schools> (citing 32 non-ABA-approved law schools).

<sup>7</sup> *Editor's Comments*, 1 VAL. U. L. REV. v, v (1966).

school in Northern Indiana can—and did—give us a first-rate legal education.<sup>8</sup>

The final issue of *Valparaiso University Law Review* honors the women and men who served this school for 140 years and this journal for the past 53 years. As law students, we were trained to learn the history of the law through cases and apply the law to the fact pattern in front of us. So, for the Tribute, we used our legal training and dove into the historical details to learn the history of this law school through previous law reviews and interaction with the remaining faculty and staff. Taking what we learned, we applied it to create this Tribute.<sup>9</sup>

### Essays

With the help and guidance of Dean Rebecca Huss, our faculty advisor, and Karen Koelemeyer, the real editor in chief of *Valparaiso University Law Review* for the past twenty years, we hatched out a structure and formulated a plan for the Tribute. They were instrumental in helping us contact faculty and emeriti to request essays that would not only give various perspectives on the law school and its history but also capture the heart of this institution through the ages.

What a privilege it has been for us to have the opportunity to interact with legends of this institution, including two founding members of the *Valparaiso University Law Review*—Professors Michael Swygert and Bruce Berner. Professor Swygert worked closely with us while producing the first essay, which captures a thorough factual background of the law school. Professor Berner offered his light-hearted “Eulogy” essay, helped us lasso a few more authors, and stopped by the law review office on a number of occasions to offer support and feedback and, most memorably, to tell us stories—in a way that only he knows how.

These essays aimed to give faculty and emeriti a voice when nobody else would, an opportunity for closure and a sense of finality despite losing this school that we have all learned to love so much. And these essays will absolutely tug at the reader’s heartstrings.

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<sup>8</sup> See Michael Swygert, *Imitating the ‘Boys’ of Albany: The Birth of the Valparaiso University Law Review*, 25 VAL. U. L. REV. 157, 170–71 (1991).

<sup>9</sup> The format of this Tribute Issue is meant to replicate the format of *Valparaiso University Law Review*, Volume 1, which included comments from the editor and a description of the first issue of the journal, as well as introductory comments from both the dean of the law school and the president of the university.

*The Greatest Hits*

Our next challenge involved reducing the 1277 previously published *Valparaiso University Law Review* pieces into a “Greatest Hits” compilation. Professor Michael Bushbaum and Dean Steven Probst were instrumental in the early stages. Professor Bushbaum created a list of each piece and how many times each was cited by both cases and secondary sources—for all 1277 published writings. Five members of our executive board spent the entire Christmas break reading through all 1277 pieces, using Professor Bushbaum’s list, to narrow the field and track down a handful to reprint as the “Greatest Hits” of our *Law Review*. Applying what we learned in law school, we chose to reprint this handful of “Greatest Hits” based on the following factors: (1) influence in the law; (2) relevance to the law today; (3) number of citations in both cases and secondary sources; (4) number of electronic downloads; (5) author prestige; and (6) the wildcard factor.<sup>10</sup>

Next, we had to hunt down and reach out to each author to obtain permission to reprint each article. Our very own Professor Levinson was instrumental because she not only gained us permission to reprint Professor Erwin Chemerinsky but also wrote a letter, on our behalf, to Justice Ruth Bader Ginsburg of the Supreme Court of the United States. Justice Ginsburg responded immediately with a heartfelt letter, addressed to “Rosalie” and signed “Ruth,” that said she was “Saddened by the news the Valparaiso University Law School is shutting down, but glad to give permission” to reprint. That inspirational letter hung in our law review office all year.

For Justice Sandra Day O’Connor, two of us wrote a letter, printed it out on Valparaiso University Law Review stationery, and physically mailed it to the Supreme Court of the United States, at 1 First Street, NE, Washington, D.C. 20543. Within a week, we had permission to reprint Justice O’Connor. Other authors were incredibly supportive of our cause, offering condolences for our situation and wishing us the best in our careers.

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<sup>10</sup> These factors were developed by the editors of Volume 53. The wildcard factor is difficult to explain and may best be summed up by Justice Potter Stewart, former Associate Justice of the Supreme Court of the United States, who wrote: “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it . . . .” *Jacobellis v. Ohio*, 378 U.S. 184, 197 (Stewart, J., concurring).

*Speeches: Service of Commemoration for Wesemann Hall*

The Tribute closes with a compilation of speeches given at the Service of Commemoration for Wesemann Hall, on the morning of May 16, 2019. The service celebrated the life of Wesemann Hall. Without this building, the law school would have met its demise over forty years ago. But because of the hard work, planning, sacrifice, and generosity of so many faculty, staff, alumni, and others, Valparaiso University Law School was able to carry on operations and continue to instill the virtues of life and law into the hearts and minds of students for many more years under the roof of this magnificent building.

The event took place in the building's atrium, where ushers<sup>11</sup> greeted guests with name tags and programs, as faculty, faculty emeriti, staff, students, and alumni, all gathered around for the service that quickly turned into a standing-room-only event. We sang songs, prayed with each other, and told stories. Afterward, we all gathered in the cafeteria for a hearty meal.

Many gathered to hear a prelude from Deaconess Valerie Webdell and a Welcome from Interim Dean David Cleveland. Deaconess Kristin Lewis then delivered an Invocation and a reading from *Ecclesiastes* 3:1-8. This was followed by the playing of a familiar hymn, "O God, Our Help in Ages Past." Deaconess Lewis gave thanksgiving:

Brothers and sisters, on Tuesday, April 16, 1985, people gathered to ask God's blessing for the work that would be done in this place as ground was broken on this site for the Law School's Wesemann Hall. Today we join together in giving thanks and remembering what has taken place in this space over the last thirty-four years.

Next, came speeches that focused on various perspectives throughout the law school building, including shedding light on the "upper-level" administrative work, planning involved in constructing the library, hearing stories from the classrooms, and gaining insight from the student spaces. Absent from the collection of speeches is *Thanksgiving for the Classrooms*, delivered by Professor Bruce Berner. Professor Berner did not write anything down, but instead chose to speak from the heart. He told stories from the classrooms and talked about how the classrooms went from being named A, B, C, D, and "Courtroom" to being given formal names like Tabor, Ulbricht, Benson, Pelzer, and Stride.

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<sup>11</sup> Current students served as ushers for the event: Joe Vojtko, head usher; Hunter Balzco; Samantha Horn; Kaitlyn Murphy; and Kelsie Plesac.

After the speeches, staff<sup>12</sup> offered prayers giving thanks for the Law School, alumni, faculty and staff; students; those leaving the Law School; and staff, professors, and students remaining next year to continue the final work of the Law School to be completed at Heritage Hall. The services ended with a declaration<sup>13</sup> and blessing:

*The Lord bless you and keep you,  
The Lord's face shine on you  
And be gracious to you.  
The Lord look upon you with favor  
And give you peace.  
In the name of the Father, the Son, and the Holy Spirit.  
Amen.*

### *Dedication*

Serving this journal during this trying time has been a great privilege and pleasure of which we do not feel deserving, and it has been a humbling honor to have the opportunity to communicate with legends of this school and the legal community in compiling this Tribute. We are humbled to have completed what little work we could, in the form of this Tribute, to serve the alumni who walked these halls before us and the storied faculty who have dedicated years or decades of their lives to this institution.

Our school was closing. But that did not stop the women and men of Valparaiso University Law Review, Volume 53. We all stuck around, rallied around these circumstances, and came together to do our best to memorialize the profound impact of this school and the lives it touched. This year, Law Review was more than editing a journal. It was about using our position for good—to serve others. It has been a great honor and privilege to serve this journal, this school, and this community as the final members of the Valparaiso University Law Review. So without further ado, we humbly present the final issue of *Valparaiso University Law Review*, a Tribute to the profound history of our school and the legacy it has carved into the legal community of this region, this nation, and across the globe.

KYLE JOSEPH FARRIS, EDITOR IN CHIEF  
VALPARAISO UNIVERSITY LAW REVIEW

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<sup>12</sup> Staff presenting prayers included Gail G. Peshel, executive director of career planning; Melissa J. Mundt, registrar and director of academic services; and Mary H. Bandstra, director of operations.

<sup>13</sup> “We give thanks for the work accomplished in this place. May the dedication and service of the people who have taught, learned, and worked here live on as they leave these walls and begin life in a new place. Amen.”