

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

Celebration and Mourning: The Valparaiso University School of Law

Michael L. Swygert

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Essays

CELEBRATION AND MOURNING: THE VALPARAISO UNIVERSITY SCHOOL OF LAW

Michael I. Swygert*

PREFACE: SPECIAL VIRTUES AND CHALLENGES OF VUSL

This is a synopsis of the 140-year history of the Valparaiso University (VU) School of Law (VUSL), a small school located in Northwest Indiana, which has graduated over 5000 men and women lawyers.

A 1978 American Bar Association (ABA) report included a list of the law school's special virtues: "Alumni have deep loyalties; students develop warm and lasting friendships; there's a strong and supportive religious culture; and there's a sense of caring and responsibility that pervades the school's atmosphere . . . special advantages that together create an environment valuable in American legal education."¹ These special virtues notwithstanding, the ABA Report also listed significant "deficiencies" including: comparatively small number of students (300); inadequate facilities; need for additional professors; a larger curriculum; and insufficient financial resources.² Dark clouds were moving in.

I. MOURNING PRESIDENT JOHN F. KENNEDY'S ASSASSINATION CELEBRATING U.S. CHIEF JUSTICE EARL WARREN'S ADDRESS

In November 1963, VU students and faculty mourned the assassination of President John F. Kennedy. Then, in April 1964, VU students and faculty celebrated the dedication of a new building for VUSL. Both the mourning and the celebration occurred in a common sanctuary, the University's Chapel of the Resurrection.

Upon learning of Kennedy's death, students and instructors streamed out of classrooms, unsure what they should do. Then, miraculously (as many perceived it) students and faculty began walking toward the chapel. There, University President O.P. Kretzmann welcomed all. He wrote:

* VU B.A., 1964; VU J.D., 1967.

¹ See ABA Council on Legal Education and Admissions to the Bar, ABA Report on Valparaiso University School of Law (1978).

² *Id.*

[T]he University Chapel was crowded with three thousand students and instructors. . . . The organ began to play, and I read the only words that could matter at that moment: “I am the Resurrection and the Life.” We sang a few hymns and resolved to have a memorial service four hours later. Soundlessly, the students left the Chapel [an appropriate sanctuary for prayer].³

On a spring day in 1964, VU’s Chapel was packed with an estimated 3200 people (1800 of whom were guests) to celebrate the dedication of the law school’s new home, Wesemann Hall. Chief Justice Earl Warren spoke on being called to the law—a noble and ethical profession that helps people and businesses resolve serious problems.⁴

Besides Chief Justice Warren, U.S. Secretary of State Dean Rusk; U. S. Senators Birch Bayh and Vance Hartke; U.S. Congressman Charles Halleck; Indiana Governor Matthew Welsh; two jurists of the U.S. Seventh Circuit Court of Appeals, Judges John Hastings and Luther Swygert; judges of various U.S. District Courts; and justices of the Indiana Supreme and Appellate Courts attended. Some thirty-seven colleges and universities sent representatives, including the presidents of Notre Dame, Indiana, and Purdue. The two-day celebration ended in the VU Chapel with an Ecclesiastical Convocation. Theologians Jaroslav Pelican of the Yale University Divinity School, and the Rev. Oliver Harms, President of the Lutheran Church Missouri-Synod, participated.

II. CELEBRATING THE 125TH ANNIVERSARY OF VUSL AT CHICAGO’S FIELD MUSEUM OF NATURAL HISTORY

In 2004, VUSL celebrated its 125th anniversary. Hundreds of alumni, faculty, students, staff, and friends attended the black-tie event at a unique venue—the Chicago Field Museum of Natural History, considered one of the finest archeological museums in the world. The Museum website indicates it houses nearly forty million artifacts in its archives.⁵

Upon entering the museum, all were overwhelmed by the spectacular three-story atrium and, even more so, by the largest assembled *Tyrannosaurus Rex* in the world, prominently displayed on the main floor.

³ RICHARD BAEPLER, *FLAME OF FAITH, LAMP OF LEARNING: A HISTORY OF VALPARAISO UNIVERSITY* 262–63 (2000) [hereinafter BAEPLER, *FLAME OF FAITH*].

⁴ See *Dedicate Wesemann Hall*, *THE TORCH* (SPECIAL ED.) 3, Apr. 25, 1964.

⁵ See *About the Field Museum: A Little History*, FIELD MUSEUM, <https://www.fieldmuseum.org/about> [<https://perma.cc/A6LC-WZE5>] (noting that its collection has grown from the original 65,000 exhibits of natural wonder on display at the 1893 World’s Columbian Exposition in the “White City”).

This mammoth dinosaur of the Triassic period (nearly 300 million years ago) was nicknamed “Sue.” Amidst the ancient reptiles stood scores of dinner tables, each adorned with white tablecloths, fine china, polished dinnerware, and beautiful flowers. The Honorable George H. W. Bush, the forty-first President of the United States, was keynote speaker. President Bush was the evening’s highlight. Following his speech, the VU Orchestra performed, while guests strolled throughout the Museum viewing its exhibits. It was an evening to be remembered. The 125th celebratory anniversary of the VUSL, looking back, may have been the high point in the law school’s long history. The guests left the Museum that evening with good feelings and high hopes about the school’s future.

III. 1859: THE BEGINNINGS OF VALPARAISO UNIVERSITY

1879: THE BEGINNINGS OF VALPARAISO SCHOOL OF LAW

By the mid-nineteenth century, Methodist parishioners constituted the largest religious denomination in the nation.⁶ The Methodist Church started numerous colleges and more than a dozen universities, including Northwestern, Vanderbilt, and Boston University. Germane to this essay, in 1859, Methodist clergy opened the *Valparaiso Male and Female College*, one of the earliest colleges to accept women. The school closed in 1871, largely due to fewer students consequent to the War Between the States. An educator named Henry Baker Brown purchased the campus and, in due course, opened a renamed *Northern Indiana Normal School and Business Institute*. Later it was renamed *Valparaiso College* and, later still, *Valparaiso University*.

The Normal School focused mainly on educating teachers. President Brown saw the possibilities of adding professional programs. One of these was law. Brown announced in the spring of 1879 that the Normal School would commence a two-year course in law by the end of the year. This was not the first law-curricular program in Indiana. Historians have recorded around twenty law-studies programs that opened during the nineteenth and early years of the twentieth century. Indiana University’s Law School in Bloomington was the first (1842); next came Indiana Asbury College, later renamed DePauw University (1853); followed by Central Law School, Indianapolis (1858); Notre Dame University Law School (1869); VUSL, Valparaiso, (1879), and Indiana University Law School, Indianapolis (1894).⁷ Lesser-known (and often short-lived) law-studies

⁶ BAEPLER, *FLAME OF FAITH*, *supra* note 3, at 19.

⁷ MICHAEL IRVEN SWYGERT, “AND, WE MUST MAKE THEM NOBLE”: A CONTEXTUAL HISTORY OF THE VALPARAISO UNIVERSITY SCHOOL OF LAW, 1879–2004, 33–34 (2004) [hereinafter SWYGERT, *CONTEXTUAL HISTORY OF VUSL*].

programs sprang up throughout the state: Benjamin Harrison, Central University, LaPorte College, Northwest Christian, and Tri-State College.⁸ More recently in 2013, the Indiana Institute of Technology opened a law school in Fort Wayne, Indiana; four years later it closed.⁹

As of this writing, only four of the roughly twenty Indiana law schools remain: Indiana University (Bloomington); Indiana University (Indianapolis); University of Notre Dame (South Bend); and Valparaiso University (Valparaiso). Soon, there will be just three as VUSL is closing permanently. All those associated with the VUSL, both former and current, are deeply saddened. More on this later.

IV. KU KLUX KLAN CAME WITHIN A “HOODED EYELASH” OF BUYING VU; ENTER, THE LUTHERAN CHURCH, MISSOURI SYNOD

Nearly 100 years ago in the early 1920s, VU, then a secular institution, was in dire financial stress. The effects of World War I cost it dearly. The university faced either shutting down or being sold. The officials tried to sell it. No one could have imagined who the purchaser might be: the Ku Klux Klan. In 1923, VU came within “an eyelash” of being sold to the Klan.¹⁰ Desperate VU officials and KKK leaders negotiated a sale. The *New York Times* publicized the tentative sale, news that rapidly spread from coast to coast. After the deal was struck, however, the Klan could not come up with the money.¹¹ As it turned out, another potential buyer came along.

Members of the Lutheran Church Missouri Synod had been considering establishing a Lutheran University when they learned that VU’s campus and buildings were for sale. Lutheran clergy, largely from Fort Wayne, but also from Valparaiso, St. Louis, and New York, negotiated with VU. The talks succeeded and the University affiliated with the Lutheran Church, Missouri Synod.¹²

⁸ *Id.* at 34.

⁹ Marilyn Odendahl, *Last Class Graduates from Indiana Tech Law School*, IND. LAW. (May 15, 2017), <https://www.theindianalawyer.com/articles/43693-last-class-graduates-from-indiana-tech-law-school> [<https://perma.cc/V8Q8-UUXM>].

¹⁰ Lance Trusty, *All Talk and No “Kash”: Valparaiso University and the Ku Klux Klan*, 82 IND. MAG. HIST. 26 (Mar. 1986). See also Richard Turcotte, *VU and the KKK, How the Klan Came within a Hooded Eyelash of Buying Valparaiso University in 1923*, GARY-POST TRIBUNE 1 (Sept. 7, 1972).

¹¹ Trusty, *supra* note 10, at 26; SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 99–106.

¹² BAEPLER, FLAME OF FAITH, *supra* note 3, at 144–48.

V. WHAT JUSTIFIES A CHURCH-RELATED LAW SCHOOL?

On the basis of student-feedback, the University's religious culture had a positive influence on the student body. But there is a deeper question, to wit: what justifies a church-related school of law? Knute Stalland, a Lutheran from Minnesota, was the first (1955–64) of three Lutheran deans who wrestled with the question. Dean Stalland posed this rhetorical question to President Kretzmann:

Is it too much to expect that . . . teachers in church-related institutions give the students something more than an external gloss? Should not the graduates of church-related law schools be ministers of more than man-made justice? . . . [T]he Law School [should pursue] its church-related mission by developing "our special lectures on Ethics."¹³

In the fall of 1960, Stalland organized a two-day "Colloquy on Law and Theology" to consider four topics: *A Christian Concept of Natural Law; Law and the Nature of Man; The Law and Revelation; and The Christian Conscience and Law*.¹⁴ Participants included: University of Chicago Dean of the Divinity School, Jean Bauer; University of Chicago Lutheran Pastor and theologian, Martin Marty; University of Michigan law professor, Paul Kauper; New York University law professor, Richard Duesenberg; University of Notre Dame professor of law and theology, Anton-Herman Chroust; and University of Chicago law professor, Wilber Katz.¹⁵

In 1987, VUSL law professor Alfred Meyer put together a symposium that he called: "The Mission of a Church-Related Law School." Speakers and topics included VUSL Professor Meyer, *The Lutheran Tradition*; former dean of Notre Dame Law School Thomas Shaffer, *The Catholic Tradition*; Howard Glickstein, *The Jewish Tradition*; and Oral Roberts law professor John Eidsmoe, *The Fundamentalist Tradition*.¹⁶ Meyer discussed Martin Luther's theology of the two kingdoms as applicable to law study, noting:

¹³ SWYGERT, *CONTEXTUAL HISTORY OF VUSL*, *supra* note 7, at 193 (quoting Knute D. Stalland, Valparaiso University Present and Future 1 (Nov. 11, 1955) (unpublished paper)).

¹⁴ *Paper Published from Law-Theology Colloquy*, THE TORCH, Sept. 24, 1963, at 2.

¹⁵ *Id.*

¹⁶ Alfred W. Meyer, *Symposium: Mission of a Church-Related Law School—The Lutheran Tradition*, 22 VAL. U. L. REV. 663 (1988); Thomas L. Shaffer, *Symposium: Mission of a Church-Related Law School—The Catholic Tradition*, 22 VAL. U. L. REV. 669 (1988); Howard A. Glickstein, *Symposium: Mission of a Church-Related Law School—The Jewish Tradition*, 22 VAL. U. L. REV. 675 (1988); John Eidsmoe, *Symposium: Mission of a Church-Related Law School—The Fundamentalist Tradition*, 22 VAL. U. L. REV. 685 (1988).

[W]e in the law schools need to welcome diversity as moral and legal ideas are tested in the crucible of academic debate. Loving one's neighbor as oneself can be a unifying theme for a normative discipline as long as we realize that we are bound to come up short in that peace which the world cannot give. . . . We need a community to remind us of this. As one of those communities, the university where religion is taken seriously provides a hospitable environment for a law school to take law seriously.¹⁷

In response to this author's question regarding church-related law schools, VU professor of both theology and law, Rev. Richard Baepler replied:

Even though there is no such thing as Lutheran law, Lutheran engineering, Lutheran economics, Lutheran chemistry, there is such a thing as a Lutheran university and each component part is Lutheran Under-girding the orientation of a church-related university is its theology of culture. The Lutheran view sees the world as two domains. In one domain, the realm of creation or culture, God creates and sustains the world through institutions we commonly denote as secular, institutions such as law, education, science, government, family, the arts, etc. In this dynamic realm reason and experience dominate. . . . Lutheranism exalts the secular realm, and seeks to promote for the good of humanity the learning which enables the secular realm to function well. . . . [A] Lutheran law school in the first place must be a school of secular excellence, no matter the faith or lack of faith of its members.

[In the religious realm,] the central task of the church is . . . to proclaim God's justice and forgiveness, shaping people to live for others out of love. This is the second realm, the realm of redemption, in which the Gospel is the operative power. The two realms come together in the theology of vocation in which Christians, supported by the Gospel, . . . [are] called to humanize the world with the competence of their professional or occupational

¹⁷ Alfred W. Meyer, *Symposium: Mission of Church-Related Law School – The Lutheran Tradition*, 22 VAL. U. L. REV. 663, 667–68 (1988).

activities It follows [that those working within] the Law School—faculty and students—should manifest qualities of competence and humane concern.¹⁸

VI. CELEBRATING THE SUCCESS OF VUSL

A. *Celebrating the Success of VUSL Graduates*

VUSL has graduated scores of distinguished lawyers. They've included five U.S. Senators from Nebraska, New Mexico, Illinois (2), and Wisconsin; seven members of the U.S. House of Representatives; four state governors, serving in Indiana, Illinois, Kentucky, and Wisconsin; federal judges and magistrates; and several state supreme and appellate court justices.¹⁹ One VUSL graduate worked in the Chicago office of acclaimed lawyer Clarence Darrow.²⁰ Another was Earl Stanley Gardner, who spent one year at VUSL. Rather than practicing law, Gardner chose to write novels about law, notably the *Perry Mason* series.²¹

George W. Norris was the first VUSL grad (1883) elected to the United States Senate. He served forty years in Congress, in both the House of Representatives and Senate. Norris helped establish the Tennessee Valley Authority, co-drafted the Norris-LaGuardia Act, and was a sponsor of the Twentieth ("Lame Duck") Amendment to the Constitution. In his autobiography—*Fighting Liberal*—Norris shared his feelings about VU and the VUSL:

[Valparaiso University in the late 1880s] in many respects was a remarkable institution. At the time it was the largest normal school in the United States It was known as the "poor boys' school." . . . Very few of the pupils came from rich families. As a result, there was on the campus of Valparaiso a spirit of democracy and of deep companionship; and I was not long in recognizing that my associations there were to have a profound influence on my life. I have met graduates of this institution, which is now known as Valparaiso University, in all parts of the United States.²²

¹⁸ Letter from Richard Baepler to Michael Swygert, (Sept. 23, 2003). See also SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 196–97.

¹⁹ See SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 3.

²⁰ *Id.*

²¹ *Id.*

²² GEORGE W. NORRIS, FIGHTING LIBERAL: THE AUTOBIOGRAPHY OF GEORGE W. NORRIS 35–36 (1945).

When speaking at VU's 1921 commencement, Senator Norris commented that VUSL graduates included "lawyers from nearly every state in the Union."²³

Adam Benjamin Jr. was a highly respected U.S. Congressman who represented Lake and Porter Counties in Northwest Indiana. Years earlier, he enlisted in the U.S. Marine Corps during the Korean War and after that was appointed to, and graduated from, the U.S. Military Academy at West Point. Then, after all those years, Adam Benjamin, in 1966, received his law degree from VUSL. He entered politics and was elected to three terms in the U.S. House of Representatives, the first Assyrian-American to be so. Shortly before his fourth term, Adam Benjamin died of a heart attack. Today, the "Crown Point Veteran Affairs Clinic" is named in his honor and so is Indiana State Road 51 in Hobart, called the "Adam Benjamin Highway."²⁴

B. Celebrating VUSL Women Graduates

Throughout the nineteenth century and during much of the twentieth, law schools admitted few women. But women attending law schools grew in numbers, especially so in the 1970s.²⁵

Florence Higgins was the first woman to graduate with a law degree in 1898 from the Northern Indiana Normal School and Business Institute (forerunner of VUSL). Moreover, she was among the first women to be admitted to law schools in the country. Ms. Higgins also was one of three women who, in the same year, became law teachers.²⁶

Francis Tilton Weaver was also an esteemed graduate of VUSL. She excelled in her legal career and has been described as a pioneer woman in the law. The facts confirm it. She was the youngest woman to be admitted to practice before both the Indiana and Illinois Supreme Courts; the first woman to practice law in Chicago; the first woman to practice in Porter County, Indiana; and the first woman to be appointed a judge on the

²³ See *Senator Norris at Valparaiso*, VALOON 18 (Apr. 1921); SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 50.

²⁴ See Adam Benjamin Jr., WIKIPEDIA, https://en.wikipedia.org/wiki/Adam_Benjamin_Jr. [<https://perma.cc/K2VL-LZTK>].

²⁵ See Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn from Their Experience about Law and Social Change?* (2009), Cornell Law Faculty Publications, Paper 12, at 15, <http://scholarship.law.cornell.edu/facpub/12> [<https://perma.cc/5GXX-57D6>].

²⁶ See SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 43-47.

Porter County Circuit Court.²⁷ Weaver received her law degree from VUSL in 1925. Years later, she shared these thoughts:

I was woman, a person, I never for once considered myself a second class citizen, nor did I believe sex (anatomy) was one's destiny. Instead I believed that the development of the mind was the destiny of mankind. I was a woman, and proud of it and wanted to retain my femininity in the world understanding that [the law] was then a man's field that I was entering.²⁸

In huge numbers women earned law degrees from VUSL and became local, state, and federal judges; legislators; prosecutors; public defenders; public interest lawyers; practicing attorneys in all sizes of firms; corporate and business lawyers; business executives and officers; and legal educators among other related vocational occupations.

C. Celebrating VUSL Afro-American & Hispanic Graduates

On January 1, 1863, during the War Between the States, President Abraham Lincoln issued the Emancipation Proclamation declaring that millions of enslaved African Americans were legally free.²⁹ Columbia professor Walter Gellhorn noted that as late as 1968 the number of African Americans admitted to law schools remained miniscule, noting that 1 out of every 625 Caucasians became a lawyer, but only 1 out of 7100 African Americans did so. Of the roughly 10,000 students who graduated from America's law schools in 1968, just 200 were African Americans.³⁰

In the 1940s, VU President O.P. Kretzmann and VUSL Dean John Morland sought to recruit African Americans to the law school. They succeeded in 1947, when Hilbert Bradley, a young man from Gary, Indiana, enrolled. By doing so, he became the first African American to graduate from VUSL. For over fifty years, Bradley worked to integrate African Americans into private businesses and public agencies and aided many minority and women lawyers to become judges. As a result, he received various awards, including the William Ming Award from the National Association for the Advancement of Colored People (NAACP)

²⁷ Ruth Vance, Valparaiso University School of Law, *Francis Tilton Weaver Our Own "First Woman,"* ALUMNI MAG.: THE AMICUS, Winter 1994, at 8, 9, http://scholar.valpo.edu/law_theamicus/10.

²⁸ See SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 110 (citing five undated pages from Valparaiso University School of Law archives titled *Francis Tilton Weaver Autobiographical Statements*).

²⁹ Abraham Lincoln, *The Emancipation Proclamation* (1863).

³⁰ Earnest Gellhorn, *Law Schools and the Negroes*, 6 DUKE L.J. 1069, 1077 (1968).

in recognition of his accomplishments on behalf of minorities. The award ceremony and celebration were held on the VU campus. Afterwards, Bradley spoke about VUSL:

The fact that I was the first Afro-American to graduate from Valpo Law brought back memories of University President O.P. Kretzmann and Law School Dean John Morland who were instrumental in my success. In fact, when it came to prepare for exams, [Dean Morland] and his wife invited me to stay at their house for a week, so he could tutor me.³¹

Richard G. Hatcher graduated from VUSL in 1959 and six years later was elected Mayor of Gary, Indiana. He was the first person of African descent to be elected mayor of an American city. He held the office for twenty years during which he was a nationwide spokesperson for African Americans, served as co-chair of the Democratic National Convention, and served as chairperson of Rev. Jesse Jackson's campaign for President of the United States.³² U.S. President Bill Clinton, in 1994, invited Mayor Hatcher to the White House to honor the leader of South Africa, the famous Nelson Mandela. Hatcher was thrilled.

Hatcher authored an article titled *The Winds of Change*, published by the John F. Kennedy School at Harvard University.³³ Subsequently, he was appointed a Harvard Fellow and taught a course on American politics. Later he taught a class in minority studies at Indiana University, and later still, was honored by Chicago's Roosevelt University as the recipient of "The Harold Washington Distinguished Chair." Mayor Hatcher also served on the VUSL faculty, initially as a Distinguished Visitor in Residence and later as a full-time faculty member.

D. Celebrating the Excellence of VUSL Teaching

Justice Robert D. Rucker was another graduate of VUSL, one of only thirty-six recipients in the U.S. to receive the "Martin Luther King, Jr., Fellowship for the Study of Law." Justice Rucker described his time at VUSL as a tremendous experience and praised the professors' teaching

³¹ Valparaiso University School of Law, *Students Honor Alumnus Hilbert Bradley as the 'Bridge Builder,'* ALUMNI MAG.: VALPO LAW., Summer 2001, at 3, 3, http://scholar.valpo.edu/law_theamicus.

³² Valparaiso University School of Law, *Former Gary Mayor Richard Hatcher to Teach Course at Law School,* ALUMNI MAG.: THE AMICUS: Vol. 2, No. 3, 1989, at 3, 3-4, http://scholar.valpo.edu/law_theamicus/7.

³³ Valparaiso University School of Law, *Faculty and Staff Activities,* ALUMNI MAG.: THE AMICUS: Vol. 8, No. 1, Winter 1995, at 10, 10, http://scholar.valpo.edu/law_theamicus.

excellence, adding: "I am truly proud to be an alumnus of Valparaiso [Law School]."³⁴ Rucker was appointed to the Indiana Court of Appeals in 1991 and was its first African-American judge. Eight years later, Judge (then Justice) Rucker was elevated to the Indiana Supreme Court.

The gender and racial composition of the students attending VUSL in the mid-1960s was predominantly white with few women. In 1964, the year that Bruce Berner and I entered VUSL, our class consisted of 65 men and 1 woman. None were of African descent. This was not particular to VUSL, as its minority situation was similar to numerous other law schools in the period. Over time, the situation changed, in part due to students and faculty encouraging more diversity on campus, and in part due to a national organization, the Black American Law Students Association (BALSA). It was instrumental in encouraging minority students to attend law school.

In the early 1970s, VUSL students formed their own BALSA chapter that taught minorities about VUSL and encouraged them to attend. By 1980, the BALSA chapter at VUSL had increased to forty-two members.³⁵ Later, VUSL students organized the Latino Law Student Association (LLSA) to assist in drawing more Latinos to the school. Taken together, the numbers of female, African-American, and Hispanic students increased significantly.

Good and effective teaching is necessary for a student's later success in the practice of law. For decades, VUSL sought law teachers of good moral character with excellent academic credentials who wanted to be teachers. The priority of good teaching has long been a hallmark of VUSL. Below, I describe three of my VUSL teachers and one classmate who joined the VUSL faculty, each of whom was awesome.

1. Professor Louis F. Bartelt (VUSL, 1947)

Professor Bartelt spent forty years on the VUSL faculty and was a master of tort law, but he was much more. Lou (as his colleagues called him) was a down-to-earth Midwesterner with no pretenses, but one ingrained with solid ethical, moral, and religious principles. He was likeable and caring, though he made it clear to incoming students that law school was a place requiring hard work, not play.

Professor Bartelt earned law degrees from both VUSL and Yale. Over his career, Lou Bartelt repeatedly was honored for his teaching, including being a recipient of a Yale Sterling Scholarship; a Rockefeller Fellowship

³⁴ See SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 268.

³⁵ Kevin Conley, Valparaiso University School of Law, *BALSA News*, 9 THE FORUM, no. 5, Jan. 30, 1980, at 3, 3.

from University of Wisconsin; the VU Alumni Association's Distinguished Teaching Award; and the holder of the Louis and Anna Seegers Endowed Chair. Lou Bartelt also served as the VUSL dean from 1964-69 and again in 1971-72. Dean Bartelt and Professor Alfred Meyer were the two faculty members who, in 1966, appointed the original six students members of the VUSL Law Review (which published for 53 years).

2. Professor Charles Gromley

Professor Gromley taught at VUSL from 1960 through 1992. Students who were fortunate enough to have Gromley as a teacher overwhelmingly considered him their best professor and for good reasons. Gromley cared about each of his students learning the law and went out of his way to help them. His office door was always open, and he never complained about spending time with students. Professor Gromley taught law in a way that students found accessible.

Gromley largely relied on the "Socratic Teaching Method" of questions and answers, as distinct from lecturing. Gromley demonstrated the importance of learning and using analogical reasoning in addition to logical reasoning. He would discuss a case and then add or subtract a fact or two, thereby turning the real case into a relational hypothetical. By doing so, he underscored how changing facts ever so slightly can make a huge difference in analyzing the legal problem. His teaching helped law students better understand the importance of the various reasoning processes.

Gromley also possessed an uncanny awareness of students in a "distractive mode," (*i.e.*, not-paying attention in class). Examples include: staring out a window; speaking to another student; looking at one's watch; or bowing one's head, as in catching-a-wink. Upon a student not paying attention, Gromley, with a half-smile and looking at that student, would calmly ask: "*Mr. Jones, (or Ms. Jones) was the court's reasoning correct? Was it in line with our earlier case of Jane vs. Doe?*" Embarrassment helped students realize that a good lawyer begins with being a good student. Gromley was telling everyone in the classroom to *always* listen attentively and *always* focus on the matter at hand.

3. Professor Alfred W. Meyer (VUSL, 1951)

Students either liked him or didn't. But, in either case, they all admired his intelligence and legal knowledge and understood he was a demanding teacher. Still, there were many who were frustrated by his

teaching method. Meyer persistently asked questions in the Socratic style, neither lecturing nor spoon-feeding.

Every student in a first-year law class taught by Professor Meyer at times felt frustrated when coming out of class. One first-year student described Meyer's teaching style like being dumped into a maze with zero instructions on how to get out. Yet, students who listened carefully over time came to realize that Professor Meyer was teaching them to teach themselves.

4. Professor Bruce Berner (VUSL, 1967)

Professor Berner, from the time he began teaching at VUSL in 1970 and for the ensuing forty-nine years, was and remains an exceptional law teacher. On the basis of students' assessments, Berner remains the best law teacher in the school's history. He has received "The Best Teacher Award" numerous times as well as the VU Alumni Association "Teacher of the Year" award. Over this period, Berner taught between 3700 and 4000 students—more than any other member of the faculty.

What made Berner such an awesome professor? Most importantly, he loved teaching law and never tired of it. Moreover, he cared about the welfare of every student. Remarkably, Berner learned their names and remembered most of them years later. He liked students and they liked him. Professor Berner was always prepared for his classes and kept up with new developments in his subjects of criminal law, criminal procedure, and trial advocacy. Add Berner's energy, sharp wit, uplifting smile, keen sense of humor, and positive disposition—law students couldn't ask for more!

But there's more to Bruce Berner's story. He never ceased to work for the well-being of not only the Law School but also the University. His contributions were staggering given the amount of time and effort involved. Routinely, he took on responsibilities beyond VUSL that benefitted the entire University. For example, for a number of years he served as VU's representative to the National Collegiate Athletic Association (NCAA); he served as chair of the VU Senate; he was chief judge on the VU Honor Court; he chaired several VU committees; and was part of University self-study programs. Moreover, Professor Berner was active in civic affairs, which included serving the Valparaiso Park System for over a decade and performing with the Valparaiso Community Theater Players.

Berner starred in several musical plays that raised money for the VU Law Clinic. His energetic performances included *The Pirates of Penzance*,

Trial by Jury, and *The Mikado*.³⁶ If this were not enough, Professor Bruce Berner was one of only twelve VUSL graduates who also earned an advanced (LL.M.) degree from Yale Law School; he also was one of the members of the first board-of-editors of the *Valparaiso University Law Review*.

E. *Celebrating the VUSL Legal Clinics and Public Interest Law*

Among all American law schools, VUSL has been at the forefront of pursuing public interest law and developing legal clinics that were designed to assist indigents and correct injustices. In 1965, VUSL started its first legal aid program, whereby VUSL and the U.S. District Court for the Northern District of Indiana (Hammond) combined resources to assist indigent criminal defendants in federal courts.

The program used VUSL-supervised law students who assisted U.S. Court-appointed lawyers in representing the indigents. U.S. District Judge George Beamer and VUSL Professor Richard Stevenson oversaw the joint project. The Federal Court/VUSL legal aid program resulted from a 1963 U.S. Supreme Court decision in the case of *Gideon v. Wainwright*. In that case, a unanimous Supreme Court held that the Constitution under the Fourteenth Amendment requires that any defendant in a criminal proceeding who cannot afford an attorney has the right to request one, not only for his trial but also for any appeal that may follow.³⁷ At that time, only 5 of 150 law schools in the U.S. required a practice or clinical course.³⁸ The VUSL joint legal aid program, together with the Federal Court in Hammond, may have been the first of its kind in the United States resulting from the *Gideon v. Wainwright* mandate protecting indigents in criminal prosecutions.

A few years later, the VUSL clinical program was considerably expanded due to the efforts of Seymour (Sy) Moskowitz, a Harvard Law School graduate from New York City. From the outset, Moskowitz was an attorney with a mission: helping poor and disenfranchised people. To that end, Sy joined the Gary, Indiana, Legal Aid Center as a staff attorney. Over time, attorney Moskowitz befriended several VUSL faculty members and VU officials. This was useful when he successfully convinced VU and VUSL officials to start an in-house clinical program, one that would use full-time professors to supervise students in the clinic while teaching related courses. The concept was great, but outside financing would be needed. Moskowitz went to work. I paraphrase his letter as follows:

³⁶ See SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 380–81.

³⁷ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³⁸ See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, 215–16 (1982).

I had a classmate who was an officer of the Ford-funded Council on Legal Education and Professional Responsibility. He advised me that CLEPR was interested in funding law schools willing to create clinical programs that would provide students academic credit for supervised law practice on behalf of indigents. VUSL Professor Burton Wechsler and I had talked about creating a different model of legal representation for indigents; one focused more on legal assistance to groups and in test cases to reform the law. Wechsler discussed the proposed clinic with Dean Bartelt and Professor Al Meyer; both reacted positively. I then wrote a proposal approved by VUSL faculty and submitted to CLEPR. It was accepted and CLEPR agreed to fund the VUSL program for three years.³⁹

After VU received the CLEPR grant, Moskowitz was appointed to the law faculty. He and Professor Richard Stevenson supervised the new “Law and the Poor” clinic, and VUSL added a tandem course on law and the poor. Not long thereafter, Ivan Bodensteiner – a Notre Dame law graduate and legal services attorney in Fort Wayne, Indiana – joined the VUSL faculty. His goal was to start an additional clinic dealing with “Law and the Federal Courts” concurrent with a new class called “Federal Courts.” As Professor Moskowitz put it, VUSL was the first to offer *classroom courses* that taught legal doctrine in tandem with *clinic cases* involving those very doctrines. Professors Bodensteiner and Moskowitz not only supervised the VUSL Clinic and taught related classroom courses but also provided pro bono legal work for various public-interest organizations, notably: Project Justice & Equality, a Gary-based public-interest law firm; and the Indiana Law Center on Law and Poverty.

During the early years, the VUSL Clinic’s clients were sparse, but in time, the numbers grew exponentially: in 1994, the Clinic handled 570 cases; by 1999, that number had risen to 700 and, later, even higher.⁴⁰ The Clinic’s outreach programs have helped scores of men, women, and children in Northwest Indiana. One example is The Juvenile Advocacy Program in which law students are appointed guardians ad litem on behalf of abused and neglected children. These supervised students went before judges of the juvenile courts in proceedings designed to protect the

³⁹ Email from Seymour Moskowitz to Michael Swygert (Dec. 2018) (on file with author).

⁴⁰ Valparaiso University School of Law, *Valpo Law Clinic Offers Vital Community Service*, ALUMNI MAG.: VALPO LAW., Winter 2000, at 2, 2.

children's welfare. The students also worked with the Indiana Department of Welfare in assisting families having problems.⁴¹

F. *VUSL Pro Bono Public Service; The Story of a Young Boy*

A lawyer's body tingles when he or she successfully represents, on a pro bono basis (no lawyer's fees), a client who has been mistreated and/or suffered an injustice. The widely publicized story below concerns a young boy who needed legal help. His name was Ryan White. From an early age, Ryan had hemophilia (a rare blood disorder that can require periodic blood infusions). When Ryan White was thirteen, he contracted AIDS from an infusion of AIDS-contaminated blood. Because he had developed AIDS, Ryan's school prohibited him from returning.⁴²

Hearing of Ryan's plight, two VUSL graduates—Charles R. Vaughan (the father) and Charles V. Vaughan (his son)—volunteered on a pro bono basis to challenge the boy's exclusion (tantamount to expulsion) from school. Initially, Charles R. Vaughan prevailed in court; Ryan was permitted to return to school. But, not so fast: parents of several other students in Ryan's class went to court and filed appeals that Ryan, again, be prohibited from returning to school. At this point, Ryan spoke to his attorney: "Don't give up Mr. Vaughan."⁴³ He didn't. The father and son worked together, and their efforts prevailed—Ryan was free to return to class. The exoneration of Ryan White through pro bono representation resulted in justice and reason prevailing over fear and prejudice. VUSL faculty and students share a culture of caring about people in distress. Ryan White's story is a wonderful example to celebrate.⁴⁴

In August 2005, Hurricane Katrina, one of the most destructive natural disasters in U.S. history, slammed the greater New Orleans region. VUSL Law Professor Derrick Carter was aware that the legal system in New Orleans was overwhelmed—that it could take years to sort it out. Carter got the idea that, during spring breaks, he could take as many as eight law students each year to New Orleans. The plan was well thought out, and it was a success. Professor Carter supervised the VUSL students in their providing pro bono assistance to Louisiana public defenders in cases that had accumulated due to the aftermath of Katrina (especially the flooding). Years earlier when Derrick Carter was a VUSL student, he worked with Professor Ivan Bodensteiner on a lawsuit that resulted in the

⁴¹ Email from Barbara Schmidt to Michael Swygert (Mar. 7, 2003) (on file with author).

⁴² See SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 369.

⁴³ *Id.*

⁴⁴ Valparaiso University School of Law, *All in the Family*, ALUMNI MAG.: THE AMICUS: Vol. 8, No. 2, Summer 1996, at 18, 21.

racial integration of the Indiana State Police—a large step forward for equality under the Fourteenth Amendment of the Constitution.

VII. ABA'S 1978 INSPECTION: FROM MOURNING TO CELEBRATION

Up to this point, this Essay's theme has celebrated the distinctiveness and special virtues of our 140-year-old VUSL. This small law school's model was never seriously challenged, at least not in a manner that would change its course and threaten its future, until, that is, the fall of 1978. That's when a combined team of inspectors from the ABA Section on Legal Education and Admissions to the Bar and the Association of American Law Schools (AALS) came to the campus for its periodic, once-every-seven-years, inspection. It was the beginning of an eight-year transformative process for VUSL. After the report was made official, VU and its law school were in a corner. Would VUSL have to be shut down? Was there any way to comply effectively with the ABA demands? Many at VU thought so, but many more were mourning other possibilities. But after several years and very generous alumni, blue skies pushed the dark clouds away, and the little VUSL rose from 300 students to close to 500, and its original building of 26,000 square feet was replaced by a new one having 76,300 square feet and an additional 15,000 square feet reserved for future expansion. Moreover, after years where the University had to subsidize the Law School, the Law School began to make a profit.

The inspectors found "serious deficiencies" in reference to the VUSL library, physical facility, and program of legal education. The list went on. Quoting from the report: "[F]ar too much time in each faculty meeting is consumed by attention to detail, especially student requests of various types. . . . [The] faculty members were spending far too much effort on student concerns, and not enough on scholarly research and writing."⁴⁵

Regarding Wesemann Hall, the inspectors found the building "barely adequate for [the law school's] current program and definitely inadequate for the future."⁴⁶ The ABA officials believed the problems could be resolved, but there were not the financial resources to do the job. The report made it clear that lack of money "'presented a great problem for this law school. . . . [T]he Law School neither had, nor reasonably could obtain, the level of financial resources believed required to provide a

⁴⁵ See SWYGERT, CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 296 (quoting the ABA inspection report).

⁴⁶ *Id.* (quoting the ABA inspection report).

sound legal education . . . within the standards of approval as promulgated by the ABA."⁴⁷

The choices were bleak. VUSL was operating far over its budget and was receiving a roughly \$400,000 annual subsidy from the University. This assumed VUSL continued an enrollment around 300 students. A second choice was for VU and VUSL to begin preparing for a much larger school that could accommodate between 450 to 500 students. The ABA had made it clear, VUSL had to have a much larger and up-to-date law school facility, a building that would likely cost millions of dollars. Not surprisingly, many VU officials and board members were stunned and believed that the University's only option was to close down the School of Law.

Vice President John Strietelmeier wrote President Robert Schnabel: "Crisis is a turning point in a life-or-death situation. Ultimately, the Board, acting in light of the best advice it can get . . . will have to decide which it shall be for the Law School: 'life or death.'"⁴⁸ In response, President Schnabel quickly put together a "Law School Task Force" to thoroughly analyze the situation, consider and assess options, and report back to the VU Board of Directors. Task Force members included Indiana Governor Otis Bowen, VU Vice President John Strietelmeier, and VU Law School Dean Charles A. Ehren Jr. The VU hierarchy and board members praised the work of the Task Force, commending "the industriousness and professionalism of Dean Ehren in gathering data and developing various options to be considered."⁴⁹ One thing the ABA and VU did agree upon: if it were possible to meet the ABA demands, VUSL would need millions of dollars and a great amount of time.

XIII. EIGHT YEARS AND \$7.6 MILLION LATER, A NEW WESEMANN HALL; VUSL BECOMES A FULL-SERVICE LAW SCHOOL

Fortunately, the ABA was willing to give VU and VUSL sufficient time to organize a fund drive to pay the cost, or a large part of it, for a mammoth new facility. President Schnabel worked closely with law school Deans Ehren, Meyer, McGovern, and Bodensteiner, along with the ABA officials, from 1978 through 1986, overseeing the planning, fund raising, and

⁴⁷ *Id.* (quoting the ABA inspection report).

⁴⁸ *Id.* at 298 (footnote omitted).

⁴⁹ Letter from John Strietelmeier, Vice President, Valparaiso Univ., to Robert Schnabel, President, Valparaiso Univ. (Jan. 19, 1979) (on file in the Minutes of the Valparaiso University Board of Directors).

construction of a new complex.⁵⁰ Years later, Schnabel told how the VU Board of Directors “led by the strong leadership of undergraduate and law alumni like Herb[ert] Stride and [Richard] Duesenberg, determined that ways must be found to meet the demands of the ABA and AALS.”⁵¹ They found the ways. Adolph and Janet Schnabel gave the largest single gift: \$3 million. By the time construction on the \$7.5 million new Wesemann Hall began in 1985, a large portion of the required funds had been raised. In September 1986, the 76,300 square-foot building opened, with an additional 15,000 square feet set aside for future expansion.

Paraphrasing VUSL Assistant Dean Curtis Cichowski: The new building made a radical difference not only in terms of space but also, perhaps more significantly, to the entire “personality” of the Law School. The School had been magically transformed into a full-service law school. The new library was larger than the entire original Wesemann Hall; faculty office space had tripled; 8 classrooms seated 534 students compared with 4 rooms seating 230; the new Wesemann had over 76,000 square feet (and eventually over 90,000 square feet following further expansion) compared with the original’s nearly 26,000. The new structure had more space for interview rooms, computer laboratories, student lounges, a faculty lounge, placement services, financial aid, admissions offices, alumni relations, and additional offices for deans, administrative support, faculty, and staff.⁵²

The new Wesemann Hall was a success. By the time the structure was one year old, the incoming class of 1987 consisted of 151 law students, well on the way to the VUSL three-year enrollment goal of 450–500 students that the ABA had declared was required for financial sustainability.⁵³ VU and VUSL had accomplished what seemed impossible nine years earlier – a complete transformation into a full-service, medium-sized law school.

Over the next two decades the school flourished, a period that has been described as its golden age. But then, starting around 2007, the legal profession and legal education faced rapidly changing circumstances that impacted not only VUSL but also all accredited law schools to some degree or other. As of this writing, at least seven law schools have had to close or are in the process of doing so, VUSL being one. Other law schools

⁵⁰ *Campaign for School of Law Underway*, Valparaiso University School of Law Alumni News 1 (Oct. 1982). See also SWYGERT, *CONTEXTUAL HISTORY OF VUSL*, *supra* note 7, at 310–13.

⁵¹ Robert V. Schnabel, President Emeritus, Valparaiso Univ., Tribute to Charles A. Ehren, 1 (May 22, 1995) (two-paged typed document on file in Valparaiso University Archives).

⁵² Curtis Cichowski, *The New School of Law: 110 Years Old and Going Strong*, ALUMNI MAG.: THE AMICUS: Vol. 2, No. 2, 1989, at 9, 9.

⁵³ See Valparaiso University School of Law, *Statistics on First-Year Class Which Enrolled on Aug. 14, 1987*, 18 THE FORUM 1, no. 1, Sept. 21, 1987, at 8, 8.

have either merged or have been taken over by others. Moreover, law school scholars predict that within a few years, another twenty or more additional law schools are likely to close. We now turn to why VUSL had to close after 140 years of its distinctive and productive existence.

IX. THE VALPARAISO UNIVERSITY SCHOOL OF LAW CLOSES

Returning to the 1977–78, ABA/AALS inspection of VUSL, recall that for VUSL to retain its accreditation, it had to build a much larger law-school building, add many more faculty members, increase the number of staff, and increase the number of students from 300 to 500.⁵⁴ The ABA Committee on Legal Education and Admissions to the Bar (consisting primarily of law school deans and professors) required all law schools to comply with its increasingly rigorous set of requirements and rules that effectively standardized all law schools, making it difficult to be innovative. What this suggests is that America's ABA accredited law schools, for decades, have not really been competing against each other but are part of a cartel.

Law professor Harry First was a noted scholar of antitrust law and in 1979 published a paper on how American law had become a cartel: "A cartel of competitors tends inevitably to eliminate the differences between them, and in so doing to become increasingly detailed in its code of self-government. This bureaucratization clips the spurs of innovation."⁵⁵ Then, in 1995, the proof was in the pudding: U.S. Department of Justice files antitrust suit against aba for misusing the process for accrediting law schools in a scheme to raise faculty salaries. The government complaint was that the ABA had intentionally, over time, misused its law school accreditation process "to inflate law faculty salaries while doing little to ensure the quality of legal education."⁵⁶ The ABA, "[t]he world's largest professional organization [] representing some 370,000 lawyers" (in 1995), signed a consent decree with the U.S. Department of Justice to the effect that it had violated federal antitrust laws through its law school accreditation process.⁵⁷ Joel Klein, a U.S. Deputy Attorney General, said

⁵⁴ See SWYGERT, A CONTEXTUAL HISTORY OF VUSL, *supra* note 7, at 300–01.

⁵⁵ Harry First, *Competition in the Legal Education Industry*, 53 N.Y.U. L. REV. 311, 400 (1979).

⁵⁶ See Press Release, *Justice Department and American Bar Association Resolve Charges that the ABA's Process for Accrediting Law Schools was Misused*, U.S. DEP'T OF JUST. (June 27, 1995), https://www.justice.gov/archive/atr/public/press_releases/1995/0257.pdf [<https://perma.cc/6AST-MNDX>]; Debbie Goldberg, *ABA Settles Antitrust Case Over Certifying Law Schools*, WASH. POST (June 28, 1995), https://www.washingtonpost.com/archive/politics/1995/06/28/aba-settles-antitrust-case-over-certifying-law-schools/91496e17-3da3-4640-bf50-5b76db84e01d/?utm_term=.18f17b6bca12 [<https://perma.cc/J3NN-54N5>].

⁵⁷ Goldberg, *supra* note 56.

the ABA process had been used to inflate the monetary benefits for law faculty.

In 2006, eleven years after the 1995 consent decree, the Department of Justice again filed in the U.S. District Court for the District of Columbia a civil contempt charge against the ABA for violating provisions of its earlier 1996 antitrust consent decree (agreement). Again the ABA admitted fault and agreed to pay the government \$185,000, a slap on the wrist.⁵⁸

Then there's the underserved, irrational influence that the *U.S. News & World Report's* annual law school rankings have had on prospective law students—effectively taking away a more rational, decisional process. The impact of *U.S. News & World Report's* yearly rankings, many believe, has been a growing, major influence on which schools prospective law students choose to apply to, though the magazine's matrix is arbitrary. In 1977, more than 160 law-school deans (out of 179 ABA-approved law schools) signed an open letter to all prospective law students:

A ranking system that exemplifies the shortcomings of all “by the numbers” schemes is the one produced annually by *U.S. News & World Report*. . . . The “weights” attached to the variables are arbitrary and reflect only the view of the magazine's editors. . . . As the deans of schools that range across the spectrum of several rating systems, we strongly urge you [prospective students] to minimize the influence of rankings⁵⁹

Indeed, many factors have contributed to the crisis in legal education. To help the reader sort this out, I recommend a book titled *Failing Law Schools*, by Professor Brian Z. Tamanaha of Washington University School of Law. Professor William Henderson of Indiana University Maurer School of Law describes Professor Tamanaha's book as “the definitive account of just how out of balance the existing model of legal education has become.”⁶⁰

Another of the major out-of-balance dynamics in the great fall is the federal student-loan program:

⁵⁸ Press Release, *Justice Department Asks Court to Hold American Bar Association in Civil Contempt*, U.S. DEP'T OF JUST. (June 23, 2006), https://www.justice.gov/archive/atr/public/press_releases/2006/216804.pdf [<https://perma.cc/5E3Z-JZBE>].

⁵⁹ STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* 15 (Basic Books 2016) (2013).

⁶⁰ BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, back cover (2012) (quoting William Henderson, Indiana Maurer School of Law) [hereinafter TAMANAHA, *FAILING LAW SCHOOLS*].

[T]hough well intended, [the program] has devastating consequences for many students. . . . Law schools, finally, are failing society. While raising tuition to astronomical heights, law schools have slashed need-based financial aid, thereby erecting a huge financial entry barrier to the legal profession. Increasing numbers of middle class and poor will be dissuaded from pursuing a legal career by the frighteningly large price tag.⁶¹

Tamanaha declares that law schools chase after prestige and revenue without regard for the consequences.⁶²

Confirmation of the frighteningly large cost of legal education comes from University of Colorado law professor Paul Campos in his book, *The Crisis of the American Law Schools*, in which he writes:

Private law school tuition increased by a factor of four in real (inflation-adjusted) terms between 1971 and 2011, while resident tuition at public law schools has nearly quadrupled in real terms over the past two decades. Meanwhile, for more than thirty years, the percentage of the American economy devoted to legal services has been shrinking. In 1978 the legal sector accounted for 2.01 percent of the nation's GDP. By 2009, that figure had shrunk to 1.37 percent—a 32 percent decrease.

. . . The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.⁶³

The Campos study includes charts showing the exponential increases in tuition over time. He analyzes both private and public law schools as groups and also specific schools. One is Harvard Law School. In 1971, Harvard's tuition was \$12,386 per year but today (2019) is \$63,800.⁶⁴

⁶¹ *Id.* at xiii.

⁶² *Id.* at x.

⁶³ Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 178–79 (2012) [hereinafter Campos, *Crisis of American Law School*] (footnotes omitted). See also Paul Campos, Legal Studies Research Paper Series (July 9, 2012) (Univ. of Colo. Law Sch. Working Papers 12–13).

⁶⁴ See Campos, *Crisis of American Law School*, *supra* note 63, at 180. See also *Cost of Attendance*, HARV. L. SCH. (2019), <http://hls.harvard.edu/dept/sfs/financial-aid-policy-overview/student-financial-aid-budget/> [<https://perma.cc/7XAY-4B4M>].

Campos concluded: “The status quo in American legal education has become unsustainable.”⁶⁵

“*Law Schools Are Losing \$1.5 Billion Annually in Tuition*,” so wrote author and researcher Karen Sloan, a specialist in developments in legal education.⁶⁶ Sloan’s article is a synopsis of a 2018 research study by three academicians: Bernard Burk, retired law professor from the University of North Carolina; Jerome Organ, law professor at St. Thomas University; and Emma Rasiel, economics professor at Duke University.⁶⁷ One of the dynamics that the Burk-Organ-Rasiel report focuses on is the strategy of law schools shifting tuition income from students with financial needs to higher-credential students who may not qualify for any financial need. Discounting tuition under these circumstances is tantamount to “buying” students at great cost. This practice substantially reduces a school’s tuition revenues. What influenced schools to discount tuitions is an enigma. One reason may be they want to protect their *U.S. News* rankings. It is complicated.

Another factor impacting net revenue of law schools has been the expansion of experiential teaching, especially clinical education where the student-faculty ratio is much lower than it is in classroom teaching. Then there are numbers: from the 1990s through the early years of the 2000s, the total number of law students enrolling in American law schools grew in part due to enlarging the schools and in part due to the opening of new law schools. The long decline in law school enrollment began around 2009 at the bottom of the Great Recession and continued through 2017. A large majority of law schools experienced the pain of falling tuition.

Then there is the issue of a law school’s location. Within a 150-mile radius of Valparaiso, Indiana, there were (until recently) twelve ABA accredited law schools, six of which were in Chicago. Besides Valparaiso University, the others were University of Chicago, Northwestern University, University of Notre Dame, Loyola University, DePaul University, Chicago-Kent (Illinois Institute of Technology), John Marshall Law School (soon to be taken over by the University of Illinois at Chicago), Marquette University, Northern Illinois University, University of Illinois (Urbana-Champaign), and, until recently, Indiana Tech University. As of this writing, Indiana Tech Law School has closed; John Marshall Law School has been taken over by the University of Illinois at Chicago; and

⁶⁵ Campos, *Crisis of American Law School*, *supra* note 63, at 222.

⁶⁶ Karen Sloan, *Study Finds Law Schools Are Losing \$1.5 Billion Annually in Tuition*, LAW.COM (Oct. 4, 2018), <http://www.law.com/2018/10/04/study-finds-law-schools-are-losing-1-5-billion-annually-in-tuition/> [<https://perma.cc/Z7U7-NKZ8>].

⁶⁷ See Bernard A. Burk, Jerome M. Organ & Emma B. Rasiel, *Competitive Coping Strategies in the American Legal Academy: An Empirical Study*, 19 NEV. L.J. (forthcoming 2019), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3255397.

VUSL is in the process of closing. Moreover, several other schools within the radius are having financial problems.

To be sure, the law school crisis has impacted law schools in various ways and to various degrees. The elite (also called the top 14) schools have had the least negative repercussions, while the lowest tier (roughly 50 law schools) have had the greatest negative consequences. It could fairly be said that the crisis in legal education has many bottom lines, but the one that follows may be the most apropos. Steven Harper (noted above) hit a nerve when he wrote: "The cynical secret is that these schools are enrolling far too many students who won't graduate, will fail to pass the bar, or are unlikely to get a JD-required job that pays enough to retire their staggering law school debts."⁶⁸ Also, we must take into consideration that the crisis of legal education, in part, resulted from significant changes within the legal profession, particularly in reference to a downward trend that began about ten years ago. Indiana University law professor Henderson notes: "For years prior to the Great Recession, lawyers were doing well and the profession was able to achieve success while practically on autopilot, but that period is fading. Now the profession will have to reinvent itself."⁶⁹

AFTERWORD

I end this Essay by sharing a bit of my own VU and VUSL story. In 1962, I enrolled at VU as an undergraduate majoring in Government. I was blessed with excellent teachers, especially Albert Wehling, Victor Hoffman, and Rev. Edger Senne. I was fortunate to get to know VU baseball coach Walter Reiner. He spent most of his life assisting people in need, including creating organizations designed to assist poor people. For example, Reiner and Rev. Senne established an organization at "Hilltop Neighborhood House" where volunteers provided child and health care for those in need within the Valparaiso, Indiana, community.

To me, Coach Reiner and Rev. Senne are representative of all the men and women ever associated with either VU or VUSL who cared, *really cared*, about the well-being of their fellow human beings and *acted* out of love and empathy. In my opinion, VUSL proportionately had more women and men who fit that let's-do-it caring model than any of the other seven universities with which I was associated. I don't mean to put down those institutions, I only wish to underscore—with the typically late-

⁶⁸ HARPER, *supra* note 59, at 212.

⁶⁹ Marilyn Odendahl, *Henderson: Survey Reveals Signs of Fundamental Change in the Legal Profession*, THE IND. LAW. (Dec. 2, 2015), <http://www.theindianalawyer.com/articles/38845-henderson-survey-reveals-signs-of-fundamental-change-in-the-legal-profession> [<https://perma.cc/87LM-6F97>].

coming wisdom of hindsight—that my eight years at Valparaiso University were the best. I so remember how many VU and VUSL professors and students volunteered to help the disadvantaged, the disenfranchised, the poor, and the discriminated against on bases of race, religion, gender, sexual orientation, and nationality. In all my years of teaching at various universities, and my year at Cambridge, I have never witnessed the degree and intensity of a university community as acting out the Biblical commands of reaching out with goodness in your heart, of being my brother's keeper, as I witnessed during my eight years at VU, five as a student and three on the faculty.

In 1967, when I graduated from VUSL, the law school's faculty consisted of ten men: Lou Bartelt, Al Meyer, Burton Wechsler, James Savage, Dick Stevenson, Charles Gromley, Marshal Jox, Jack Hiller, Alan Morrisson, and Col. Jones. (Warning! Before getting to the heart of this Essay, here's my one-sentence biography.) Upon graduating from VUSL I went to Yale for an LL.M., then practiced two years in Chicago before accepting an offer to join the VUSL law faculty where I stayed three years before moving to DePaul University Law School in Chicago (eight years), then finishing up at Stetson College of Law in Florida (twenty-seven years) while, in the meantime, visiting on law faculties at Notre Dame, Wake Forest, DePaul, and Emory, and being a law-scholar-in-residence at Cambridge University. *So what* you may ask.

Because I wish to underscore that from 1964, when I entered the law profession and legal education, through the time I retired forty-two years later in 2006, from my perspective I was never connected with a finer law school—both as a student and as a faculty member—than my alma mater, the Valparaiso University School of Law. Not one of the seven other law schools I have been affiliated with came close to the “specialness” of VUSL. I often think back to those eight years I was at VU and VUSL. I cherished the quality of the teaching, the closeness and camaraderie of the faculty and students, and the culture of care and giving. Over several years of my career, I pushed back some of my VUSL memories, but now being retired, I no longer question that in my career the best came first. I have no regrets, but I am fully aware of how much I received from my years at VU and VUSL.

Today, like many of you readers are, I am trying to cope with the closing of our Valparaiso University School of Law. Our mourning is real, yet necessary. Mourning enables us to move on by focusing more on what we have gained and hopefully passed on to others. The lessons of life and law are still within us.

Understandably, many people may be confused and angry over the closure. Hopefully these feelings will morph into mourning, and from

mourning to acceptance, and from acceptance to celebration – not of the closing but of knowing that the knowledge and values instilled in us at VU and VUSL remain. Because, in the end, we celebrate not only what is good and here today but also what was good but gone. In short, we may acknowledge the parameters of mourning and celebration as being connected and inevitable.

*WE MOURN AND CELEBRATE THE CLOSURE OF
VALPARAISO UNIVERSITY SCHOOL OF LAW, ITS GRADUATES,
STUDENTS, TEACHERS, ADMINISTRATORS, AND FRIENDS.*

POSTSCRIPT

I hope this Essay has helped readers understand the context in which the Valparaiso University School of Law is closing and why Valparaiso University officials under the circumstances had no viable choice. I believe that the closure of our beloved law school in no way is related to what VU did or did not do. Law schools, like people, do not have full control of their destinies. That's in another realm.