

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

Experiencing Valparaiso Law's Golden Age

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EXPERIENCING VALPARAISO LAW'S GOLDEN AGE

D. A. Jeremy Telman*

I. INTRODUCTION: THE LOST CHARMS OF THE SMALL BUSINESS

Valparaiso University Law School is going the way of locally-owned bookstores. Whatever value they provide to their local community is not enough to overcome larger market forces. Regardless of the unique services a neighborhood bookstore provides to its regular customers, regardless of the skills of its owners, managers, and employees, it cannot compete in a new economy, in which the merits of face-to-face interactions, collegiality, and idiosyncratic charm cannot be measured and thus cannot be appreciated.

Something irreparable happens to a neighborhood when it loses its bookstore. There is no longer the familiar, quirky bibliophile who greets you when you enter and presents you with seven books she has set aside for you to look at. She knows the kinds of books that interest you, your immediate family, your friends at work, and perhaps friends that you have in common. The neighborhood also loses a gathering place, a point of connection, something that, just by its very existence, ineffably makes the neighborhood so much more than the sum of its parts. All of that has been replaced by an algorithm that suggests books to you based on books you have looked at in past searches on the Internet, and those same "suggestions" will now show up as ads on your web browser that are neither charming nor helpful. Rather, they are a creepy reminder that the cozy neighborhood bookstore has been displaced by the panopticon.

The analogy is imperfect. The Law School is not closing because of Amazon or Wal-Mart, but it is closing because of wider economic developments that have nothing to do with the quality of its faculty or of its staff, whose dedication to our students, alumni, and the broader community remain undimmed as the lights in Wesemann Hall flicker and extinguish. In the wider world of legal education, the passage of Valparaiso University Law School will not be received as a major disruption. However, the local effects will be significant.

Much of the story of that local impact will never be told because it is counter-factual. It is the story of future students who will never have the opportunity to attend this Law School and who, as a result, may never have the opportunity to attend law school at all. These hypothetical future

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students fit the profile of the students we have been trying to serve for decades: they are smart and motivated, but they may come from families where the aspiration to higher education and the professions were not the norm. They were late-bloomers who muddled their way through college before some experience sparked an interest in the sort of career to which a legal education paves the way. Now, they will not be able to return to their communities and contribute through public and private service to the well-being of those communities in the ways that only a well-trained lawyer can do.

II. THE LAW SCHOOL'S GOLDEN AGE

I did not realize it at the time, but I came to the Law School during a golden age. The Law School had long enjoyed a reputation as a solid regional law school that trained prosecutors, public defenders, and small-town attorneys. At the heart of the Law School's curriculum was a doctrinal faculty committed to teaching and to the education of practitioners with the right combination of practical skills, client-centered focus, and commitment to law as a tool for social justice. Beginning in the 1970s, the Law School led the way in legal education by creating rigorous skills and experiential learning programs that helped our students hit the ground running when they entered the legal profession and enabled our strongest students to excel and become partners in major law firms, judges, and other government officials.

People who were senior faculty when I arrived joked sardonically that our brand was the law-school equivalent of the "best little whorehouse in Texas." We could not compete, and did not want to compete, with law schools situated at major research universities. But within our niche, we provided exactly the sort of legal education our students needed. It was a good niche, but with the growing importance of *U.S. News & World Report* rankings, the Law School had to compete on a national stage. In the 1980s, the Law School aspired to play with the big boys, recruiting both faculty and students nationally, enhancing its programming and its expectations of faculty members as both teachers and scholars.

I can only write of the Valparaiso University Law School that I know. The prior history of the Law School is well told in Michael Swygert's book.¹ I have been fortunate to know three outstanding men who served as the Law School's Deans during its golden age, Ivan Bodensteiner, Ed Gaffney, and Jay Conison. Each had their own strengths; each provided the Law School with the leadership it needed at the time they served, and

¹ MICHAEL IRVEN SWYGERT, "AND, WE MUST MAKE THEM NOBLE": A CONTEXTUAL HISTORY OF THE VALPARAISO UNIVERSITY SCHOOL OF LAW, 1879-2004 (2004).

Ivan Bodensteiner, in addition to being Dean, stepped into the breach as Interim Dean whenever the Law School needed his unique talents and qualities.

Beginning in 1981, the Law School annually hosted the Seegers Lecture in jurisprudence. A few years later, we were able to add the Monsanto Lecture in torts. In the following decade, we added the Tabor Lecture in ethics and the Indiana Supreme Court Lecture (now the Rucker Lecture), which usually addresses legal issues from a feminist or critical-race perspective. After I arrived in 2004, we added the Martin Luther King Lecture. These five annual lectures became the intellectual highpoints of our academic year. We were able to attract people at the very pinnacle of our profession, and they shared with us their latest work. Almost always, our guests were flattered by the invitation, generous with their time, and impressed with our faculty, our students, and the institution as a whole. Our speakers not only delivered a talk but remained for a follow-up lunch colloquium on the day after the public lecture, giving students and faculty an opportunity to connect with our visitors in a more intimate setting. The lectures were usually published in our *Law Review*, raising the profile of this publication in the process.

As Dean, Ed Gaffney unquestionably enhanced the Law School's luster and its reputation, establishing our Cambridge program and somehow corralling Supreme Court Justices to join Law School faculty in teaching the courses offered there. As it grew in ambition, the Law School also grew in size until even our largest classroom could not accommodate our entering classes that numbered over 200 students.

When I arrived during Jay Conison's deanship, the Law School had an incredible lineup of events and traditions that made it a unique place to work, to teach, and to interact with one's colleagues and students. In the Fall, there was the 1L Dinner, the Cardozo Cup, the Swygert Moot Court Finals, and the Law Review Symposium. In the Spring, there was the Honors Reception; a Law-School-sponsored major conference; the fundraiser for the Clinic, a musical comedy performed by faculty, staff, students and alumni; and then the flurry of events associated with graduation: the Barristers' Ball, the Cane Walk, the banquets to celebrate and recognize our co-curricular organizations, the Champagne Reception, and, more recently, the Faculty Roast. For someone like me, who wanted to come to a place that would be not just a place of work but an intellectual, cultural, and social community, the Law School supported a very full and satisfying professional life. The challenge for faculty members was to find the sweet spot between being a committed participant in the Law School community and achieving a reasonable life/work balance.

While the Law School's teaching faculty grew in size and came to include more and more productive and innovative scholars, those gains did not come at the expense of the skills and experiential learning programs that have long been among the Law School's core strengths. The Law School had only three full-time, legal-writing instructors when Dean Conison arrived.² Eventually, the number of full-time legal-writing faculty members increased to six, not including Associate Dean Adams, who came to us as a full-time legal-writing instructor. When I arrived in 2004, the Law School boasted six clinics, an impressive number, but we then added two more full-time clinical faculty members and created the one-of-a-kind sports law clinic, directed by Mike Straubel, who was already a full-time faculty member.

Jay Conison was not a generator of great ideas for the future of the Law School. Rather, he took care of the financial end of things and expected faculty to generate ideas that he would look for a way to support financially. That engine of creativity was revving on high toward the end of Dean Conison's stay here. I remember meeting with our alumni relations people while I was Associate Dean for Faculty Development to share with them all of the new projects that we had launched just in the past year. I cannot remember all of them now, but there were about fifteen items, including: a student-edited law blog; Faisal Kutty's Legal Journalism course; a new study-abroad program, International Humanitarian Law in Israel and Palestine; a redesigned first-year curriculum, entailing seven-week "minimesters" and a first-year experiential learning course; a new poverty law clinic; hosting three annual regional faculty workshops each year; a new quasi-clinic in public international law; new masters programs to be offered out of rented space at the Lutheran Theological Seminar of Chicago; and new third-year "practicum" opportunities that would enable our students to establish a concentration in a particular area of law.

III. DECLINE AND FALL

Irresponsible bloggers assume that because our Law School and Charlotte Law School, where Jay Conison moved after he left here, were sanctioned by the ABA at the same time,³ Jay Conison must be responsible for those accreditation problems.⁴ I cannot speak with any certainty about

² *Id.* at 356.

³ Michael Gordon, *Charlotte Law School Dean had Big Problems at Another School*, CHARLOTTE OBSERVER (Dec. 22, 2016), <https://www.charlotteobserver.com/news/local/article122533504.html> [<https://perma.cc/2YS4-7BHR>].

⁴ See *Dean Jay Conison Skills for Charlotte School of Law; Comedy Gold Ensues*, OUTSIDE THE LAW

what happened at Charlotte, but I think the problems with the Infilaw schools were clearly not Jay Conison's creation. While all of us must live with our share of the blame for what went wrong here, I think very little of that blame should fall to Jay Conison.

His great strength was that he was a responsible administrator. The Law School flourished under his leadership. We grew in every imaginable way. Both our student body and our faculty grew in size. As our students started struggling with the bar, we hired a full-time ASP director and then hired two more people to work full time to promote our students' academic success. The Law School became more diverse, we launched new programs, and we built on existing programs while aspiring ever higher. The major decision that sunk the Law School was a decision to become less exacting in our admissions standards. That decision was taken after Jay Conison's departure and had absolutely nothing to do with him.

While that decision was clearly a mistake, it was not driven by economic considerations, as people often assume.⁵ Certainly the University was concerned about enrollments at the Law School, but our decision was mostly driven by our mission. At the time, we saw ourselves as an "opportunity" law school. Our students had always done well on the bar and in the profession, even though their incoming credentials were among the lowest at any ABA-accredited law schools in the country. We thought that, since our class size was shrinking and we had introduced a new curriculum designed to help our students transition into practice, we could still get good results, even if we accepted students whose LSAT scores were lower than those of students we had accepted in past years. The Law School's leadership at the time did not think that the LSAT was a reliable predictor of success on the bar or in the legal profession.

But faculty members were blindsided by two things: (1) the incoming credentials of the new class were much lower than we had anticipated – dipping from a median LSAT of 149 to 143; and (2) the new class ended up being the largest we had ever admitted, at least fifty percent larger than we expected. The new curriculum was not designed to handle such a large class, and some of those students were not up to the challenges of law

SCHOOL SCAM BLOG (Jan. 5, 2015), <http://outsidethelawchoolscam.blogspot.com/2015/01/dean-jay-conison-shills-for-charlotte.html> [https://perma.cc/HV6M-846G] (attempting to undermine the credibility of Conison's statements as Dean of Charlotte by pointing out that he had previously been Dean of Valparaiso). The blog blames Conison for a decline in admissions standards that occurred at Valparaiso *after he left*.

⁵ See Noam Scheiber, *An Expensive Law Degree and No Place to Use It*, N.Y. TIMES (June 17, 2016), <https://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html> [https://perma.cc/E37E-63RF] (implying that financial pressure from the University caused the Law School to lower its admissions standards).

school and demanded a lot of additional time and attention from faculty and staff. There was little information available to us at the time about the professional prospects for students like those in the bottom half of the class we had just admitted. We now know that such students are at significant risk of being unable to pass the bar. Had that information been available at the time, we certainly would have made use of it.

IV. THE LAW SCHOOL AND THE UNIVERSITY

Ever since I have arrived in Valparaiso, people have told me that there were problems in the relationship between the University and the Law School. I was warned about faculty members and administrators on the other side of campus who “hated the Law School.” I never experienced such hatred. Because I have a background in the humanities and taught history at the college level before I attended law school, I was immediately drawn to the faculty on the other side of campus. I served on numerous campus-wide committees, and I always felt that the unique perspectives I could offer as a law professor and the unique skills that law professors bring to the challenges of university life were greatly appreciated.

A more genuine issue was the question of how the Law School contributed to the University’s broader mission. As a secular Jew, I had concerns when I was offered a teaching position at the Law School. Each year, faculty members have to sign an employment letter, in which we are to affirm that we are “sympathetic with the Christian intellectual tradition.” The first time I saw this letter, I contacted Dean Conison and asked him what it meant. He assured me that there would be absolutely no restrictions on my academic freedom and that ours was a secular law school attached to a Lutheran University. Others may have experienced this place differently, but Dean Conison’s assessment always seemed accurate to me.

Years later, I was to be officially promoted to full professor during the University’s annual Convocation, which takes place in the University Chapel at the beginning of each Fall semester. During that ceremony, I was supposed to stand on the Chancel and agree that I would “continue to share and affirm the mission of this University as a center of learning in the Christian intellectual tradition, in service to society and to the Church.” As a life-long academic, the achievement of tenure was among the proudest moments of my professional career. I did not think it fair or proper that I, a non-Christian, should have to stand up in the front of a church and affirm words that were, as to me, false both in spirit and in fact. I objected to my Dean, who passed on my concerns to the Provost.

There followed a frank exchange of e-mails. The Provost shared with me his understanding of the Lutheran educational tradition; I shared with

him my Jewish perspective on Lutheranism, which included my knowledge of Martin Luther's virulent anti-Semitism. It was hard for me to ignore that part of Luther's legacy and that made me reluctant to pledge service to the Church. Moreover, I reminded him, I don't serve the Church. I serve my students.

Our exchange was, for me, a high point in my interactions with the University's administration. I felt comfortable expressing my views, knowing that I knew far less about the Lutheran educational tradition than did the Provost, but also confident that the Provost should be interested in hearing my views, given the University's struggle to retain its Lutheran heritage and yet reflect the ever-growing diversity of its faculty, staff, and students. I learned a great deal from the exchange, and I felt increasingly comfortable signing my annual employment letter as a result. The Lutheran tradition that the Provost expounded to me was capacious. I had little difficulty finding that I could teach and serve the Law School in a manner consistent with that tradition. As the Provost explained to me, the Lutheran perspective is that none of us knows God's plans for us. It would be arrogant for us to think to know the proper path for ourselves. Given that, we should strive to be the best version of ourselves we could be and have faith that doing our best was what was expected of us. My motivation for being the best version of myself I could be was not grounded in Christian faith. Nevertheless, my aspiration to excel as a faculty member, as a teacher, as a colleague, and as a scholar were fully consistent with the Christian intellectual tradition as I had come to understand it.

I regret that it has only been in the past few years that I have come to realize that one of the greatest ways in which the University fulfills its Lutheran mission has been through its support of our secular Law School. Some of my colleagues at that Law School were animated by their Christian beliefs when they made contributions to Valparaiso and to Northwest Indiana; often they derived their ethical commitments from other sources. No matter. In any case, their work was consistent with the Lutheran educational tradition and the University's mission.

The Law School pushed the University to become a more welcoming and inclusive place before it was ready to do so on its own. In 1991, the law faculty "adopted a statement barring discrimination on grounds including religion and sexual orientation."⁶ The rest of the University followed suit, only to have the policy vetoed by the University's president on the advice of its board of directors.⁷ Over a decade later, the University

⁶ SWYGERT, *supra* note 1, at 353.

⁷ *Id.*

adopted a non-discrimination policy after consultation with Dean Conison and Professor Bruce Berner.

The Law School introduced the requirement that our students do pro bono work before our accrediting body made such service mandatory,⁸ and our pro bono requirement still exceeds what those accrediting bodies require. And yet, many of the students who graduate from our Law School exceed even our pro bono requirement, amply demonstrating their, and the Law School's, commitment to the public good.

We teach our doctrinal courses in ways that integrate conceptions of law, of social utility, of justice, and of professional ethics, while training students to think like lawyers. Our students put this knowledge to work in our clinics. All law schools have law clinics. But ours were among the first, having been founded in the 1970s.⁹ Our law clinics are locally rooted as few law clinics are today. Our tax clinic has served an average of 25 clients per year over the past ten years. Our domestic violence clinic and juvenile clinic served over 30 per year. Our mediation clinic served nearly 50 per year. Our civil clinic and our criminal clinic each served over 120 clients per year over the past ten years. For those clients, the Law School's clinics make the rhetoric of this University a reality, and for this University, those clinics are the embodiment of an ideal.

V. CONCLUSION

The University determined that there were no scenarios in which the Law School could once again become financially sustainable. But long-term and even medium-term economic outcomes are difficult to predict. After having been definitively edged out of the market by big-box stores, Amazon, and the death of the book or reading or intelligent life on the planet or what have you, neighborhood bookstores have staged a rousing comeback. According to the *Boston Globe*, "[B]etween 2009 and 2015, independent booksellers across America grew by an astounding 35 percent."¹⁰ Such a turnaround, if it comes, will not help the Law School or Valparaiso University. Another enterprising institution is likely to swoop in and reap the rewards of providing a service that Northwest Indiana so evidently needs.

⁸ *Id.* at 339–41.

⁹ *Id.* at 254–58.

¹⁰ James Sullivan, *Bookstores Escape from Jaws of Irrelevance*, BOST. GLOBE (Dec. 17, 2017), <https://www.bostonglobe.com/arts/books/2017/12/05/plot-twist-for-bookstores/7U6qgeWtbw18iBOSH0UdO/story.html> [<https://perma.cc/3J4G-XRKZ>].