

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

### A Eulogy for VUSL

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## A EULOGY FOR VUSL

Bruce Berner\*

As with all eulogies, this piece will not focus on the causes of the subject's pending demise but on the innumerable special gifts, knowledge, and joys it produced during its lifetime for all those who were lucky enough to be involved with it.<sup>1</sup> I started as a student in the Fall Semester of 1964, graduated in 1967, practiced for four years in New Jersey, returned as a faculty member in the Fall Semester of 1971, and taught through the current academic year. I was, thus, fortunate to be directly involved at VUSL<sup>2</sup> for 52 of its 141 years. In addition to my incredible luck of having had my parents; my wife, Linda, of fifty years; our kids, Wendy, Eric, and Karl; and our granddaughter Margeaux; it has been my incredible good fortune to have a wonderful involvement with this fine institution. Let me reminisce with examples of VUSL experiences by category, starting with . . .

**Wisdom.** As a student, I received wisdom from my teachers and my fellow students. As a faculty member, I received it from my colleagues and my students. When anyone would ask me if I thought my students learned much from me, I would report that I hoped it was half as much as I was learning from them. Much of my wisdom and learning came from a guy named Charley Gromley, my candidate for the best teacher at VUSL ever! One day in the 1970s, at an Admissions Committee meeting, we were discussing applicants and came across one from Southwestern Michigan<sup>3</sup> who had a low LSAT score but a high grade point average in tough subjects from Calvin College. Charley wanted to admit, but another member of the Committee said, "Oh, look at the LSAT. He's just an overachiever." Charley crooked his finger and said in that wonderful drawl, "Yep, and like all those Dutch Mafia kids, he'll be an overachiever the rest of his life." AND HE HAS BEEN!

For about fifteen years, Charley and I co-coached the VUSL Moot Court Teams. During many of them, Charley would pull the following stunt: on Thursday afternoon, get the four people from the two teams together and tell A and B they were the appellants and C and D that they were the appellees and give them the weekend to study the problem. On

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<sup>1</sup> For a complete history of the Law School, see my classmate Michael Swygert's fine history, "*And, We Must Make Them Noble*," (2004), covering 1879-2004, and his current Essay in this volume rounding that out.

<sup>2</sup> Valparaiso University School of Law. Recently the name has been rendered Valparaiso University Law School (VULS), but I continue to prefer VUSL—my friend Voozle.

<sup>3</sup> In those days there were no law schools in Southwestern Michigan and thus we drew many graduates from Calvin College, Hope College, and Western Michigan University.

Monday, we would all meet again and Charley would tell them he made a mistake and gave each of them the wrong team (a few times he would blame me). What always followed was one of the greatest learning experiences I ever had. They were very, very upset, not at the mistake, but at the idea of representing such a horrible side, as they had quickly come to believe their opponents were. They would learn what all lawyers need to know: "Never judge a case after hearing one side; and when you hear both sides, recognize that the truth lies somewhere in between." For years after, I adapted Charley's idea whenever students in my Criminal Law or Criminal Procedure classes told me they had an interest in practicing criminal law and asked how they should begin work in that field. I would always say, "If you want to be a prosecutor, start with the public defender's office; if you want to be a defense counsel, start with the prosecutor's office. You always need to know how the other side thinks." If the question were one about what area to practice in, I would share a piece of advice I received from Al Meyer: "Look for the intersection of your talent and your interest."<sup>4</sup>

Wisdom came to me from students as well. As I looked at the composite of the class of 1995 the other day, I saw three faces that reminded me of the wisdom they had bestowed on me. Two sat together in almost every class and were very good friends – let's call them Dan and Norm. Each was highly intelligent and had strong political views – each from the opposite side of the spectrum. They learned from each other day after day and never lost their friendship over politics. I often joined the discussion and learned far more from them than they learned from me. What a lesson for us to learn *today*. The third was a student whom I had asked to answer a problem in class from our Contracts casebook. The problem went something like this:

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<sup>4</sup> While I have about forty more Charley stories, I'll just share two more: (1) He and I were at a VU basketball game in the 1980s, and a guy sitting near us who could hear us talking asked, "Are you guys lawyers?" Charley said "yes" and the guy (clearly not a lawyer fan) said, "Is it true that lawyers know *everything*?" Charley said, "No, it's not, though you've probably met some who think so. But a lawyer is someone who knows where to *look* for almost everything." (2) Charley, Al Meyer, and I were sitting in the faculty lounge in the '80s just before the move in 1986 to the current building. Charley's first-year Property exam was underway, and students would come in occasionally to ask questions about the test. (Note that this has not been allowed for the past ten years or so.) With about fifteen minutes left, a student came in and asked, "Professor, in Question 6 is X married?" Charley said, "Nope." Two minutes later another student walked in and asked the same question. Charley said, "Yep." After he left, Al and I looked at each other with eyes opened wide, and Al said, "Charley, you gave them different answers to the same question." Charley said, "It doesn't matter if X is married, but I wasn't going to tell them that."

Geri Smith received an envelope in the mail addressed to her which said, "If you merely open this, we will give you \$1.50." She opened it and it went on to say, ". . . if you buy two of our products." She tells you she did not buy a product but asks you if the company owes her the dollar fifty anyway.

He—let's call him Bruce—said, "Professor, let me get something straight. Are we really talking about a dollar fifty?" I said, "Yes, please advise Geri." (This was a pretty basic question about how unilateral contracts work.) He put his hands on his book, leaned forward, and said, "I would advise her, GERI . . . GET A LIFE!" Pandemonium! Here a student taught us not only the correct answer to the contracts question (after the laughter had died down) but also how to help clients with problems they don't even know that they have. All three are still practicing in Northern Indiana. As I like to say, "Almost all of my heroes used to be my students." Teachers' accomplishments occur vicariously about 99% of the time. That's why I love to keep up with our grads in the paper. Last year I followed a major federal trial involving the Sheriff of Lake County, Indiana, because the U.S. Attorney who filed the claim was our grad, the Assistant U.S. Attorney trying it was our grad, and both defense counsels were our grads.<sup>5</sup> Our alums just keep making us proud.

I've never been sure if I have disseminated much wisdom to my students, but an incident several years ago suggested at least it is possible. I was playing golf with a graduate from the 1980s who practices locally and is a gifted trial attorney. He mentioned that I said something in class that saved him many times in his career in court. Shocked, I said, "Really? What did I say?" He said, "Although it is not *always* possible, *whenever* possible, try to avoid getting into an argument with the person who will decide who *won* the argument." I think I got that from my dad who was explaining how he got along so well with my mom.

**Community Experience.** More and more today, college and graduate school are commuter experiences for most people. During most of my experience at Valpo in general, and VUSL in particular, it was a total community experience. When students were not in class, they were in faculty offices, in the library, in the lounges studying, studying in groups, playing cards, playing chess, reading newspapers, etc. The current 2L class is working on a lot of group jigsaw puzzles in the Atrium. The beginning of the VU Law Clinic in 1969 created many other opportunities to put legal learning to immediate use. (More on this later.) The law

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<sup>5</sup> Every day I read the papers starting with the obits. If my name isn't there, I read the rest of the paper.

school provided all kinds of extracurricular experiences such as Law Review, Moot Court, Mock Trial of many sorts, and student governance by the Student Bar Association. I loved tracking the SBA because they had elections every year, and the political signs and debates were *way* better and smarter than the drivel and meanness we Northwest Indiana people have to watch every year coming out of Chicago.

Some of these other activities were completely non-curricular. Law students participated in the intramural sports programs at the University and joined University choirs, orchestras, bands, and theater groups. The law school put on yearly basketball and softball tournaments, sponsored “roasts” in many years honoring faculty and students, and put on musical shows or theatrical performances in the University Theater or in the VUSL Courtroom (both in the first Wesemann Hall on east campus and the current Wesemann on west campus). One year, before the Faculty/SBA basketball game, Al Meyer and I agreed that we would hire for \$1.00, as a “Temporary Adjunct Professor,” a 1L student named Eugene Parker who had been an All-American basketball player at Purdue. Eugene had decided not to go on to the NBA but, instead, to come to law school. The poor 2Ls and 3Ls did not know what hit them, and it was the only time the faculty won that game.<sup>6</sup> For many years the faculty would travel together to a spot for the weekend (sometimes Culver Academy, sometimes a hotel in the Michiana Dunes area) to discuss a variety of topics that a committee would put together—a great way to learn about new colleagues, discuss common concerns, and trade stories about our students. Late at night, there would occasionally be some drinking. One night we all went swimming in Lake Michigan after midnight. How we all survived is beyond me.

**Legal Services, Clinics, and Pro Bono Work.** At the Commencement for the Class of 1987, I gave these remarks as class advisor:

Let me quote a line from my favorite modern philosopher, Woody Allen, in one of his rewrites of scripture: ‘The lion and the lamb will lie down together, but the lamb won’t get much sleep.’ Whatever you do with your degree, no matter how many lions it is your good fortune to represent, do the Valparaiso University School of Law one last favor: EVERY ONCE IN A WHILE, HELP A LAMB GET A LITTLE SLEEP.

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<sup>6</sup> Eugene practiced many years in Fort Wayne and was the agent for many players moving into the NBA.

That was not a new idea. Whether the label was “legal services,” “law clinic,” “pro bono work,” or “poverty law,” the idea was always alive and well at VUSL. Our Clinic directors, Seymour Moskowitz, Ivan Bodensteiner, Hugo Martz, David Vandercoy, and Derrick Howard, as well as interim directors Linda Long, Barbara Schmidt, and David Welter, have all embodied this idea. Many of our students who engaged in clinical work, to continue the idea, came back as Clinic teachers, including Barb Schmidt, Marcia Gienapp, David Welter, Paul Kohlhoff, and Scott Wagenblast.

An event in the early 1970s was my first direct observation of this kind of work at VUSL. When I was a student in 1967, we had Estate & Gift Taxation from a young Gary lawyer/adjunct professor, Burt Wechsler, who was very bright and always dressed in a three-piece suit. When I returned as a faculty member four years later, Burt was on the faculty full-time, dressed in jeans, and taught Constitutional Law. He was a force in the courtroom for under-represented people. A senior in a nearby high school showed up in Burt’s office on a Wednesday in June reporting that the school told him he could not attend graduation the coming Sunday unless he cut his hair. He didn’t want to and Burt knew that there was a Seventh Circuit case already making it clear that a school could not exclude him on this basis. Burt filed for a TRO Thursday morning together with a forty-page brief. Because of the time shortage, the District Court Judge set a hearing for Friday morning. Burt, Sy Moskowitz, Ivan Bodensteiner, and others showed up, and the rest of us waited to hear the outcome. We knew that counsel for the school was a firm with a number of our grads. (Those were the days most of the faculty hung around all summer because we had either summer school or that was the only good time to write Law Review articles.)

Once the hearing started, Judge Beamer (who forever became my hero that day), in reply to the school’s counsel’s argument that the plaintiff had not exhausted his “administrative remedies” said, “OK, I’ll have a cup of coffee in my office, and you guys exhaust your administrative remedies.” After a few minutes, everyone was exhausted, and the Judge returned. The defense counsel now said that Mr. Wechsler’s brief was forty pages and that they could not be fully prepared until Monday. The Judge said, “OK, I hereby set another hearing for Monday morning.” As Burt Wechsler started jumping to his feet, the Judge continued, “Oh, and I hereby postpone graduation until Tuesday.” Stunned silence was followed by immediate settlement.<sup>7</sup>

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<sup>7</sup> We were all pretty sure a judge could not reset graduation, but by then everyone wanted a way out.

The VU Law Clinic continues to this day handling important cases and accomplishing important results in state and federal courts. One of the great questions to be answered after VUSL shuts down completely in May of 2020 is how this void can be filled locally.

#### CONCLUSION

To all of the students, colleagues, and staff I have known over the past fifty-two years: thank you, thank you, thank you. You have filled my life with wisdom and happiness. There is nothing in this world greater than watching that look upon on a person's face when that "aha experience" hits and what was, immediately before, mystifying the person now becomes something over which that person has control.<sup>8</sup>

Since retirement, I continue every day to look back on this wonderful place and relive so many memories of the great people who have passed through this place. I also have more time to spend thinking of life's great questions, especially from a Lutheran perspective. To all my students who enjoyed my crazy class handouts on the colored paper, I intend soon to be finishing one more for circulation, which I hope to call *The How to Get to Heaven Flow Chart*. I'll keep you posted.

For my seventeen 2L heroes continuing through until 2020, see you next year! To my pal, VUSL, stay strong, and in May of next year, RIP knowing that you will continue to make the world a better place through the many whom you taught.

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<sup>8</sup> One of our grads from the Class of 1974 (the class that started the same day I started teaching), Jim Jorgensen, has been my buddy ever since. He and I went to "back-to-school" night at Valparaiso High School when our sons took almost all their classes together, so Jim and I spent the night together going from class to class. When we entered one, the two men behind us entered and each made shuddering noises and one said, "Oh, no, I always dreaded to enter a classroom, and I still do even though it's my kids who have to go." Jim and I looked in amazement at each other because the classroom was, for us, the happiest place on earth. Jim indeed spent many years on the Valparaiso School Board because he was so committed to the importance of education to young people.