

ValpoScholar

Valparaiso University Law Review

Volume 53

Number 4 Summer 2019: Tribute to Valparaiso
University Law School (1879-2019)

pp.885-887

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

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Recommended Citation

Ivan Bodensteiner, *The Significance of Closing VULS*, 53 Val. U. L. Rev. 885 (2019).

Available at: <https://scholar.valpo.edu/vulr/vol53/iss4/8>

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THE SIGNIFICANCE OF CLOSING VULS

Ivan Bodensteiner*

Since it was announced that VULS will close, I have heard many questions about the decision. The primary question is *why*? I will not attempt to answer that question because I don't know why. From the outside, it appears that decisions made by the American Bar Association (ABA) played an important role. Some have suggested that there are too many law schools, or too many seats available in the existing law schools, resulting in a surplus of attorneys. That may be true, at least in a legal system where adequate representation for all is not a priority and a substantial percentage of the population does not have access to representation.

If in fact law school capacity is too high, given the current distribution of legal representation, what is the appropriate remedy? One possibility is to leave it to the marketplace, but is that an appropriate way to allocate justice? Maybe the ABA should do more to support the law schools that make a real effort to expand the availability of legal services. Or, maybe the bar exam industry should be replaced with an apprentice program that would truly measure one's ability to practice law. The law school graduates enrolled in such a program could help serve those without the resources to pay for representation, under the supervision of licensed attorneys.

All law schools, including VULS, celebrate placement of graduates in the large law firms, in large corporate legal departments, in federal court clerkships, and in law schools as faculty members. The first two placements trigger big salaries, the third triggers deferred big salaries, and the latter triggers greater freedom. There is nothing wrong with celebrating such placements. However, why celebrate these more than the graduate who takes a position with a legal services program providing representation to those who fit within the current definition of poverty?

With many noteworthy exceptions, I expect the celebrated placements mentioned above are heavily populated with persons who came from a privileged background. That is understandable, given the fact that the common path into law school, and law school itself, as well as the profession, favor those with a privileged background. And, I should add, there are many lawyers with a privileged background who are doing great work for unprivileged consumers of legal services. However, I believe legal services will be distributed better when we have more lawyers who got to law school without the benefit of privilege.

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You ask, what does this have to do with the loss of VULS? Possibly nothing, but if the loss of schools like VULS becomes a trend, I think we will see a negative effect on the profession and the distribution of legal services. I wish I had made a record of the law students, and graduates, of VULS who mentioned to me that VULS gave them an opportunity when other law schools would not. To them VULS was an “opportunity” law school. That is why I believe it was worth preserving.

However, I recognize the issues that arise when a significant percentage of a school’s graduates do not pass the entrance-to-the-profession exam—the bar exam. Until fairly recently, a school with the reputation of teaching the bar examination was viewed as inherently weak, even though graduates were not allowed into the profession unless they could pass the bar exam. I am not convinced there is a good answer to the question—does success on the bar examination predict success as an attorney? Or, maybe more importantly, does failure on the bar examination predict an inability to practice law as an attorney?

Although I cannot direct you to comprehensive statistics (that does not mean they don’t exist) showing otherwise, I expect the bar exam results in most states show that racial minority applicants fail at a rate higher than white applicants. Further, I expect that privileged applicants, of all races, succeed at a rate higher than non-privileged applicants. In the field of employment discrimination, when an eligibility test eliminates racial minority applicants at a rate significantly higher than white applicants, the user of the test must validate the test, that is, show that the test accurately predicts ability to perform the job.

Has the LSAT been validated? More importantly, have bar examinations been validated? If not, why are they used to disqualify candidates? As far as I know, the practice of law has not gone to hell in Wisconsin since the state abandoned the bar examination for graduates of Wisconsin law schools.

Back to VULS, should it have been closed and will its closure negatively affect the profession? I don’t know. However, I do know that VULS has graduated many good lawyers who are very successful in the profession. Without exception, those graduates who have spoken to me (admittedly a fairly small sample) about the closure are saddened by it.

Other attorneys, who did not graduate from VULS but who practice in Northwest Indiana, are similarly saddened because of VULS’s contribution to the profession and the communities in the area. They mention the contributions of the clinical programs in making the legal system accessible, the availability of law students to serve as law clerks for law firms in the area, the contributions of law students to public institutions as they satisfy the VULS pro bono requirement, the

availability of a law library, access to CLE programs, and access to VULS graduates when filling attorney positions.

In closing, I want to mention the very competent, dedicated people who have worked at VULS during the time I was affiliated with the school. This group includes faculty, but it also includes non-faculty whose importance is sometimes forgotten or at least discounted. In my experience, with rare exception this group of women and men was dedicated to making the students' time at VULS as good as it can be for a law student. There are many stories that demonstrate how this staff-student relationship was positive and beneficial to both sides. Speaking for myself, I clearly gained more than I gave.

Finally, to members of the Law Review, thank you for the opportunity to write a few words. More particularly, thank you for not requiring footnotes!