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"THERE WERE GIANTS IN THOSE DAYS"†

Bruce G. Berner*

Good morning. My name is Bruce Berner and I am serving as chief counsel for the defense. I am, of course, deeply honored to be asked to deliver a few remarks about my dear friend, Alfred W. Meyer. He was one of the most important influences in my life as a teacher, a lawyer, and a person. There are, by the way, thousands of people who would acknowledge Al's influence in such a way, and it is a blessing for me to serve as their proxy. Bear in mind that being asked to sum up the life and contribution of Al Meyer in a brief set of remarks is not unlike going into teaching a summer University course with these instructions, "Bruce, you have five weeks to cover Western Civilization." The bad news is that I'm going to leave some things out, I'm not going to please everybody, and I can only see it from my vantage point. The good news is that, unlike the Western Civ Teacher, I don't have to decide whether or not to skip over the Dark Ages because Al didn't have any Dark Ages. Al Meyer was fierce, vibrant, exuberant, pulsating life from beginning to end. He did not go gently into that good night because he never went gently anywhere. I have no doubt that, as I speak, various functionaries in heaven are flummoxed trying to respond to tough questions that no one until now has had the temerity to ask. "That's my mansion over there? Why in God's name isn't it the one across the street?" If you knew Al, you'd know that he would say this kind of thing not because the assigned house was worse, but simply because he had not picked it out.

In my faith, we understand humans to be formed in the image of God. But God has a variety of faces, a variety of images, and different ones appear more clearly in different persons. Scripture tells us, "Whom the Lord loveth, the Lord chastiseth."¹ *Proverbs* has this similar idea basically stating, "Whom the wise man loveth, he chastiseth."² And here was the bottom line with Al. If he loved you, you were headed for trouble, my friend. You were headed there because you could not rest until you met Al's incredibly high standards—standards, by the way, which he happily applied to himself. Al insisted that those he loved be all that they could be way before the Army adopted that slogan. What I learned more clearly from Al than from anyone else I have ever met is

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¹ *Hebrews* 12:6.

² *Proverbs* 13:24.

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that when people get angry with you, challenge you, force you to state the principles upon which your ideas are based, however uncomfortable that makes you, you are dealing with someone who cares about you. These are not signs of disdain; indifference is the sign of disdain. Al saw the excellence and the beauty at the center of the people and institutions that he loved. And he would not rest, or let them rest, until all things holding them back were reduced or eliminated. And the more he loved them, the tougher it was going to be.

Let's start with family, because that's where Al would start. Nancy, his pride in you was unbounded. Your success as a lawyer and a journalist, your tenure in the Communications Department, your directing the Freshman Seminar Program, and later, your involvement with him at Martha's Village for the homeless and at the Legal Services Clinic in California, your leadership in the capital campaign to build Hilltop Community Health Center, and your work in the Stephen Ministry in Valparaiso—these and so many other things made him proud. Jayma, your talent as a swimmer, a lawyer, a mom, and your courageous battle with illness were sources of immense happiness for him. Mark, the work you have put in to being a good father and your obvious joy in your family multiplied itself as joy for your Dad. Steve, his *sympatico* buddy, your ongoing conversations on sports, politics, and the local scene, and your lovely family buoyed his spirits all the time. Karl, your skills as a tennis player (Al himself was a remarkable athlete and reminded me that there were times he could beat you) and more recently, together with your son, as a juggler in the act "Noodleini and Son" put smiles on his face. Laura, Al derived joy from your successes as a mom and college teacher as if you were of his blood. And all you grandchildren were in so many ways the crowning joy of his life.

But, and here is my point: I'll bet it was at times not as clear to you as to the rest of us how much pride he had in you because, when with you, he was always working towards improving you. Some teachers simply can't stop teaching. To see what he thought of you from my perspective, consider this reversal of our positions. My guess is—my hope is—he occasionally said to you some nice things about me. Do you assume he always said them *to me*? Here is an example of the things I would often hear: "Bruce, baby, I read how you were quoted in the paper this morning. Maybe it's just because you came from New Jersey, or learned nonsense at Yale, or root for the White Sox, but I expected better from you. I really did. What were you thinking?" And then we'd talk about it. And at the end of the conversation, I'd recognize that my quoted remarks could have been better. I'd see that he loved me. I'd also note

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that my morning could have been a hair more pleasant. Al would always trade pain now for improvement later.

The next item is the incredibly complicated and important relationship between Alfred W. Meyer on the one hand and Valparaiso University on the other. Talk about a love which would lead to some chastising! In 1926, Valparaiso University was purchased by a group of Lutheran laymen and several prominent Lutheran academics were brought in both to elevate the academic standing of the institution and to imbue it with a Lutheran character. One of these hires was Alfred H. Meyer, a geographer, who for decades served VU as a scholar who attained national renown, a fine teacher, and chair of the Geography Department. His son, Alfred W., born soon after the arrival of his parents in Valparaiso, grew up in an environment which many of us are pleased to think of as the intersection of academic excellence and a strong religious, and of course particularly Lutheran, commitment. This is what we are proud to call, "Athens and Jerusalem." Al loved that locution—and kept it in mind. If he thought that first-rate academic insistence was lacking, he'd say, "You know there's supposed to be an Athens in here!" If spirituality was grossly ignored, he'd say, "You know it's Athens *and* Jerusalem!"

Al graduated from high school in 1944 and immediately signed up for the Navy as an Air Cadet as there was some kind of conflict going on. It ended quickly thereafter (and surely his entry had a causal connection to this), and he returned to VU and then VU Law School, graduating in 1950. He received an LLM from Harvard in 1951 and was a Cardozo fellow at Columbia University School of Law. He served in the Judge Advocate General Corps of the United States Army, including during the Korean conflict. He was teaching Law at Indiana University School of Law in Bloomington when Valparaiso beckoned once again. He returned in 1963 to Athens and Jerusalem upon the impassioned plea of his friend, Lou Bartelt, and served the school until his retirement in 1994 as Professor, Dean on numerous occasions, and as the second occupant of the Seegers Chair in Law (again following his friend, Bartelt). He put his stamp on the school in more ways than time permits me to mention. He was a scholar writing principally on Contracts and Commercial Law, a skillful administrator, and a great teacher in the Socratic tradition. He wasn't based on Kingsfield from *Paper Chase*—Kingsfield was based on him. (One of my classmates came out of Al's Contracts class and said that he had concluded that Al's teaching style was called the Socratic Method because after about ten minutes you'd actually choose to take hemlock rather than endure any more.)

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Let me select, from the numerous ways that Al improved the Law School, one in particular, not because it is the most important but because I have direct knowledge of how it was the persistence of Al and Al alone that made it happen. Those of you who know law schools know that a journal, called a law journal or law review, is a key indicator that a school is serious about scholarly writing. It contains pieces written by important national professors, jurists, and lawyers, and pieces written by current students who edit and run the operation. If you did not have one today, you could hardly survive as a law school. Al saw that trend coming. In the fall of 1965, Al invited six of us second-year law students to lunch at Wellman's, which was about as fancy as it got in Valparaiso in 1965. We weren't naïve enough to think it was truly a free lunch and it wasn't. Al told us we were going to start a law review. The "we" were the seven of us, including Al. And so we did. Al saw that it needed to happen and saw some people he thought could do it. (Michael Swygert, Al's choice as the very first Editor-in-Chief, was at the center of Al's vision.) I do not recall that "no" was an option that any of us thought was on the table; in fact, I do not recall that Al actually asked any questions that day. None of us would have said "no" anyway. Perhaps we knew even then that "Whom the wise man loveth, he chastiseth." Today, the *VU Law Review* has grown just slightly—from seven to almost fifty. I went down to the *Review's* office yesterday morning and can report that they are hard at work on Issues 3 and 4 of Volume 41.

Why did Al come back to Valparaiso in 1963 when his talents would have permitted him to teach at almost any law school in the country? Surely his father's connection with the place was important. His father had many options too but stayed because he saw something unique at this place. Surely impassioned pleas from colleagues like Bartelt and encouragement from giants such as O.P. Kretzmann were important. And let's talk of one more name that spoke to Al, though in this case spoke to him across the centuries—Martin Luther. My friend, Al, got Luther and Lutheranism as well as anyone I've ever known. The old saws about Lutherans hating change or not tolerating disagreement or thinking that everything is black or white were not how Al saw it. What he saw at the center was a person who would stand in front of an Emperor—an Emperor, the strongest and most influential person living on earth—and not give in regardless of the horrible potential consequences to himself because he believed in a principle. And here then is the love-hate relationship Al had with Valparaiso University. Sometimes he'd see a place momentarily afraid to change a light bulb and he knew it traveled under the banner of someone who had agitated and revolutionized Renaissance Europe.

Let me share one example of how well Al had learned his Luther. In the middle of what us older folks remember as "Kent-Cambodia" in 1970, the Law School canceled spring exams for third-year students and instead had them go out into the community to talk with various groups about the legal and political issues generated by those horrible events that had so divided Americans. But the Indiana Supreme Court objected to the waiving of exams and threatened to deny Valpo Law graduates the right to sit for the July bar exam, stating in effect that their degrees were not valid. Dean Alfred Meyer went down to Indianapolis (for you Luther scholars, a town a bit to the west of Worms) and stood in front of the Court alone and delivered his own "Here I Stand" speech for this little Lutheran law school and its students. And he won the day. Martin had to be proud. Here was a Lutheran who ate more than strudel and drank more than coffee. Come to think of it, I like to believe that after his own stand, Luther too went out and had a couple of martinis.

A few years before retirement, just to show that an older dog could still learn new tricks, Al moved into a newly emerging field known as "Alternative Dispute Resolution," or "ADR," which included ideas of arbitration, mediation, and negotiation. He was later invited by the Law School to give the Seegers Lecture, VU Law's longest standing endowed annual lecture series, on developments in the burgeoning ADR movement.

After his retirement and his receipt of the highest award the State of Indiana bestows, the Sagamore of the Wabash (appropriately presented by his former student Senator William Alexa), Al the teacher just kept learning. Then he took and passed the California Bar so that he could provide legal services to the least among us. All the lawyers here will appreciate my repeating this: *After he retired, Al passed the California Bar Exam.* Have you yet gotten the impression that we are dealing here with a person of some substance?

Al loved everything that was beautiful and excellent. He loved fine music—indeed we will hear some Bach this morning that absolutely chilled Al just a few weeks ago when the University performed the St. John Passion. He loved sports and indeed was a terrific athlete—tennis, golf, handball (what today we'd call an "area class" handball player) and, are you ready—badminton. Shortly after I started teaching here, Al invited me to the gym at lunch to play badminton with him, Dick Stevenson, and Charley Gromley. Being a brash youngster, I said I'd not only play but would bring the pink lemonade and wear my taffeta outfit.

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We all played, and I spent the next two weeks wrapped in Ace bandages. This was not badminton I had ever seen!

He adored good writing, whether classical literature or just a good political essay or a well-written piece of sports journalism; Jim Murray was a favorite columnist. He loved people who knew how to use the language and he was himself a student of that language. If you would tell Al that people were saying things "behind somebody's back" Al would say, "Well then they're saying it right to his face. What you mean is that they're saying it in front of his back or behind his front." Once when someone told Al that his last remark was "the dumbest thing I ever heard," Al replied, "Well, what was the second dumbest? I want to know what I beat out."

In the 1970s, the Law School was expanding its clinical program and hired new faculty to deliver more legal services to indigent clients and start courses in Poverty Law and related subjects. An alumnus wrote a scorching and impolitic letter to the school objecting to wasting money on poor people and on "Communist" notions. Now, you will note that there are all kinds of bad ways for a law dean to deal with this which either bring the school into a bad light or create problems for an alum who might have dashed off the letter before thinking very carefully. Al wrote him back this short letter and enclosed the original of the alum's letter: "Dear _____: I feel obligated to notify you that some moron is writing letters like this to the Law School and signing your name. Cordially, Al Meyer."

How does one conclude this brief summary of Al's life and significance? I asked many of our friends what they thought must be said before conclusion. (You will see that some of them have odd senses of humor.) In almost all cases, they mentioned aphorisms that Al himself was fond of using. One said that he had received the word of Al's passing "more in sorrow than in anger," a way Al often signed off on letters, especially ones with a bit of hostility in them. Another noted that if Al were listening and could respond, he'd wish you all, "Peace, Power, and Joy!" But of course I finally get to pick. Over the past fifteen years or so, when Al and I would speak of the past, of the times when our generation's heyday was at its zenith, and we would reminisce about world leaders like Roosevelt, Churchill, or Kennedy, or sports figures like Ernie Banks or George Mikan, or names in the local Valpo pantheon like Al's dad, Strietelmeier, Kretzmann, Bartelt, Gromley, Baepler, Thomforde, Morrisson, or Swygert, Al would always underline the love

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wrapped up in the remembrance by concluding, "Ah, Berner, there were giants in those days!"

Al, there *were* giants in those days. And you, my friend, were the giant right in the middle, telling all the rest how they could grow to be even bigger and better.