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## Valparaiso University Law Review: The Beginning

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# Introduction

## VALPARAISO UNIVERSITY LAW REVIEW: THE BEGINNING

Bruce Berner\*

### I. INTRODUCTION

Volume 1, No. 1 of the *Valparaiso University Law Review* was published in the Fall of 1966; thus, 2016 is the fiftieth anniversary of this publication. I have been asked, as a member of the first Law Review Board, to write a brief piece on the founding and starting of the Review. Michael I. Swygert, my dear friend and the Review's first editor-in-chief, who went on to a long career in legal education,<sup>1</sup> assisted greatly with this Article.

As most reading this know, a law review contains pieces written by important national professors, jurists, and practitioners, as well as pieces written by current students who edit and run the operation. If a law school did not have one now, it could hardly survive. Service on the Law Review Board is still one of the main things potential employers look at. Professor Alfred Meyer (and shortly thereafter, for the first of three times, Dean Alfred Meyer) saw that coming. In the fall of 1965, Al and then-Dean Louis F. Bartelt, invited five of us second-year law students to lunch at Wellman's. (That was about as fancy as it got in 1965 in Valparaiso.) The group was comprised of Michael Swygert, Michael Virgil, Peter Wilson, Allen Landmeier, and myself. (George Valsa, our classmate, and Robert Lee, a third-year student, were added later as business managers and our classmate John Yakimow was added to the Editorial Board.) We didn't 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 six of us, including Al. And so we did. Al, with assistance from Dean Bartelt, saw that it needed to happen and saw some people he thought could do it. (Michael Swygert, whom Al selected as the first Editor-in-Chief, was at the center of that vision.) I do not recall that "no" was an option that any of us thought was on the table—I do not in fact recall that Al actually asked a question that day! None of us would have said "no" if given the option.

Professor Meyer, who had previously taught at the law school at Indiana University in Bloomington, arranged for us to meet with the

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<sup>1</sup> Among other books, Michael wrote, *And, We Must Make Them Noble, A Contextual History of the Valparaiso University School of Law, 1879–2004*, which was published by Carolina Press in 2004. Michael was immensely helpful in the research and memory for this piece.

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editorial board there. Their Editor-in-Chief, Arthur Fell, and his staff were incredibly helpful in acclimating us to all the duties and pressures we would face. Indeed, Michael Swygert leaned heavily on Art during our next two years and they have remained great friends over the years.

II. SOLICITING AND EDITING ARTICLES

All Law Review Board members know that soliciting and editing articles are among the most important, difficult, and frightening tasks they face. Being responsible for the first issues, we, of course, had no previous connections that produced articles already slated for production or at least spoken for. But we had some of the best help imaginable. Michael Swygert's father, Luther M. Swygert, was, at that time, a well-known jurist serving as a federal judge on the United States Court of Appeals for the Seventh Circuit. He solicited the following: Justice Tom C. Clark, United States Supreme Court, who wrote an article on the jury in America;<sup>2</sup> Dale Broeder, an attorney and assistant in the University of Chicago Jury Project;<sup>3</sup> and Judge Robert Grant, United States District Court, Northern District of Indiana.<sup>4</sup> Professors Jack Hiller and Burton Wechsler both solicited articles from well-known professors or practitioners and wrote pieces themselves for Volume 1. Alfred Meyer solicited articles from some very prestigious academicians in legal education and arranged for Valparaiso University's permission to run as an article a speech that Roscoe Pound had given at Valparaiso University in 1959 for its 100th anniversary. Pound spoke on *Sociological Jurisprudence*, a theory of law that Pound was best known for and that remains widely known and referred to still today. Meanwhile, Professor Jack Hiller (who had studied at Yale Law School) invited Professor Ronald Dworkin of Yale Law School (and later of Oxford University) to write a response to the posthumously-published Pound address.

This last piece created one of the most interesting scenarios in the overall experience of the first board. Michael Swygert was not and is not a delegator. He is a doer.<sup>5</sup> He undertook to edit the short, three-page "critique" that Professor Dworkin wrote on the Pound speech. He was

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<sup>2</sup> Tom C. Clark, *The American Jury: A Justification*, 1 VAL. U. L. REV. 1 (1966).

<sup>3</sup> Dale Broeder, *The Impact of the Lawyers*, 1 VAL. U. L. REV. 40 (1966).

<sup>4</sup> Robert Grant, Book Review, 1 VAL. U. L. REV. 434 (1967) (reviewing DONALD NEWMAN, CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL).

<sup>5</sup> In 1967, a late January blizzard shut down the law school for three or four days. Michael was "trapped" in the law school. As it was at the time when serious editing for Volume 2 had to be done, Michael's wife, Dianne, and I both knew immediately that he planned to get "trapped" so that he could finish that work. The editing of the Dworkin piece was part of his three days.

thoroughgoing in suggesting many ways the piece could be improved or modified. He sent this to Professor Dworkin, who wrote back his objections, but not to Mike. Dean Bartelt moved his letter on to Al Meyer, who saw nothing wrong with the editing, and told Mike to run it as he had reworked it. Michael got his LL.M. at Yale Law School the following year and took Dworkin's famous course in Jurisprudence. They had many conversations about various aspects of Jurisprudence, but the Valpo Law Review piece never came up—as Mike puts it, “happily so.”

### III. NOTE WRITING

Before we became editors in our third year, of course, we were second-year Note writers. Having no editorial board in place to help us with our Notes as second-year students, Al Meyer arranged for each of us to have a faculty advisor for this purpose. Of course, today faculty will help by giving directions, advice, and light editing, but the heavy editing is done by student editors. The faculty advisors we had were not shy about heavy editing. I was assigned to Dean Louis Bartelt. Now I had worked hard on it, had been an English major, and fancied myself as a writer. I was sure the editorial session would be short and we would talk about whether or not a few commas should be added or removed. I was sure he would detect how brilliant it was. Today, I realize that our one-hour session could have been published in Volume 149, #3 of the *Journals of the Spanish Inquisition* under the title, *PeeWee Herman Meets Torquemada*.<sup>6</sup> There was more writing in red ink than the black type buried within. I spoke maybe eight times in the hour and each time said, “Uh-huh.” Two things have over time become clear to me as a result: (1) I am no Ronald Dworkin, so my submissions can be edited; and (2) My Note was, finally, a hundred times better because of the care my dear friend, Lou Bartelt, put into the task of editing.

All who have written know that however easily they accept criticism of their speaking, analysis, or behavior generally, almost EVERYONE hates to have their writing critiqued, especially if they have put much time into it. A writing is, after all, a creation. So all law review editors first find out how tough it is to take critique and how gently one must later “pay it forward” to the next group.

For the first time since I graduated, I re-read my Note as I thought through this assignment. It bears the gripping title, *Federal Habeas Corpus – The Search for a Solution to the Prematurity Concept*, and I remembered not one whit of it. Nor is it even vaguely an issue anywhere

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<sup>6</sup> I have on previous occasions referred to this as *Pee Wee Herman Meets The Sanhedrin*. As I get older, I am becoming more pluralistic and inclusive.

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today. But the discipline gained through the torture of writing, re-writing, re-writing, etc., and having it DEEPLY criticized by Torquemada all helped develop the kind of toolbox needed to do our work. As Albert Einstein said, "Education is what is left after you have forgotten the entire content of the course." Law Review articles and notes are often misunderstood. Many claim that the writers of articles are "experts" principally because the scope of their piece is so narrow and specific that no one else in the world has even imagined it, much less thought or cared about it. Only one's mother reads the whole thing or at least claims to have. When my mom told me she "really liked" my Note, I asked her what it was about. She said, "About criminals, I think." I could now tell her that it was really about "helping to shape my life as a lawyer and a teacher."

IV. THE REST OF THE FIRST FIFTY YEARS OF VAL. U. L. REV.

The Review has grown and improved over the years. From five students in the spring of 1966, the institution today involves over forty students and staff in various capacities. It has added "symposium issues" covering in-depth specific and important legal topics. It has published over the decades numerous endowed lectures given by distinguished professors, jurists, and practitioners. It recruits not only students selected by academic performance, but through "write-ons" offered to all law students.

For me, one of the great highlights was the 1994 symposium in Volume 28, including U.S. Supreme Court Justices Sandra Day O'Connor and Ruth Bader Ginsburg, entitled *First Women: The Contribution of American Women to the Law*. Part of the reason is because I think the greatest and most positive change for American law in this fifty-year period is the emergence of women in equal numbers and as equal citizens as students in law schools, law practice, on the bench, and in law schools both as professors and deans (including at Valpo). My class started with sixty-seven students, of whom sixty-six were male. Only twenty-nine graduated. Joanne was one of them. The 1994 Symposium was an important and early, yet overdue, tribute to many of the women trailblazers in the legal profession. And, of course, this movement in recent American experience affects Law Reviews as well. Over the past twenty-five years or so, women often represent more than half of the Law Review's members, editorial boards, and editors-in-chief (including our current editor-in-chief).

The other two shifts over the past fifty years of legal education are (1) the development and refinement of clinical legal education (which Valpo paid attention to early and has continued to expand); and (2) the

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continued growth of specialization in legal practice which is needed in a world getting more complicated by the minute but which also threatens to eliminate the legal “generalist,” something that has already begun to happen as well in medicine. The world will continue to need “big picture” people.

V. CONCLUSION

In closing, on behalf of the tradition of the Valparaiso University Law Review, let me thank Al Meyer, Michael Swygert, Lou Bartelt, Jack Hiller, and all the members of the original board for their contribution to the beginning. Thank you also to all who followed who suffered when their research and writing were mercilessly edited, who suffered when the huge egos of the article writers whined when they moved a comma in “their” text, who spent hundreds of hours writing on a subject that no one else cared a hoot about, and whose labor in the law review vineyard kept right on training budding lawyers to think, to read, to write, to speak, and to solve problems. Those are, after all, the only commodities that legal education produces.

