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Tribute to Norman Dorsen

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TRIBUTE TO NORMAN DORSEN

If this were a Dickens tale with Norman in the role of Scrooge, I would surely be cast as the Ghost of Dorsen's past. For I will have known Norman for a full 50 years next September—longer, I suspect, than most of the other speakers.

We met for the first time at Harvard Law School. Though several months younger, Norman was already a second-year student enjoying the lofty status of a Law Review editor, while I was an awkward beginner fresh from the raw frontier of Beverly Hills. Oddly enough, most of our early contacts were on the basketball floor, where we represented the Law School in various local tournaments under assumed names like Oliver Wendell Holmes and Louis Dembitz Brandeis. Why we needed assumed names I cannot now recall; surely, our amateur status neither needed nor deserved protecting. Whatever the reason, basketball provided important clues about Norman's nature. Though very successful on the court, he never relied on height, speed, or exceptional coordination. He played with his mind, always disciplined enough to perform within his capabilities and always smart enough to be in the right place at the right time, well ahead of his slower-witted opponents.

Away from the basketball court, I quickly noticed that many of my Law School classmates seemed prematurely middle-aged. With their three-piece suits and briar pipes, they were already acting and talking as they would decades later. Not Norman. He was definitely a work in progress, continuing to evolve through stages of his life extending well beyond his law school graduation. At Harvard, I would say, he was a hardworking professional in the making with his eye set on a position in a reputable Wall Street firm. During his military service in the Pentagon, he gained a clearer sense of the workings of large institutions and the limits of legal analysis in ordering human affairs. Later still, during a fellowship in England, he acquired a deeper set of concerns—a commitment to social justice and an empathy for those not amply blessed with life's privileges and rewards.

I like to think that Norman took the best from each of these experiences. From law school, he honed his ability to think clearly, reason carefully, and see all sides of human problems. From the Pentagon, he gained a greater realism about what one could expect from large organizations and bureaucracies. From England, he developed a social conscience rooted in a concern for those less fortunate than himself. These qualities, I think, have combined ever
since to animate his work in constitutional law, in the American Civil Liberties Union, and in the Lawyers' Committee for Human Rights.

Of course, I should not dwell exclusively on all that has changed in Norman over the years. Certain qualities have been there all along through half a century of friendship. One of these is kindness. I recall an early encounter with Norm that took place, not in the gym, but in the reading room of the law library where I was struggling to comprehend the mysteries of a moot court case involving some arcane issue of oil and gas. Norman appeared as if by magic and offered to help. Throughout my difficult first year, he was always available to give advice about a baffling legal problem, although he must have been overwhelmed himself by the demands heaped on new recruits to the Harvard Law Review. From that day to this, Norman has always been ready to do whatever was required to help a friend in need.

He has also been constructively candid in his advice to a degree that is exemplary even among good friends. I remember talking with him once about whether to accept an offer to join the Harvard faculty that came unexpectedly just as I was preparing to leave the Army. “Derek,” said Norm in a voice so kind that one could not possibly take offense, “do you really think that you are smart enough to be a professor at Harvard?” That was surely the right question to ask, and I continue to debate it to this day.

Finally, Norman has always had an exceptional capacity to be completely absorbed by the institutions he serves, willing to commit himself totally to working for their improvement. Above all, he has always dedicated himself passionately to the affairs of this Law School. Small wonder, you may say. NYU, after all, gave him the incomparable Harriett. But even before Harriette, Norman was wholly absorbed by this institution. In those early days, I must confess, his preoccupation took the form of an unrelenting criticism of the School, its policies, and its failure to set high enough expectations for its future. Indeed, so absorbed was he in the travails of the institution that I sometimes thought that I must know more about the failings of the NYU Law School than the president of the University, or even the dean, although I had not yet even set foot inside these buildings.

Today, I am pleased to report that criticism and frustration have long since given way to an intense pride in the accomplishments of the school. What a blessing that these happy years of approval followed his earlier discontents and not the other way around. As it is, both Norm and this school can take real pride in
having worked together so successfully to bring about one of the notable transformations in the world of higher education—the emergence of NYU Law School as one of the great centers of legal learning in the world. As the ghost of Norman’s past, I can only report that to all of us who played basketball with him half a century ago, such success hardly comes as a surprise.

DEREK BOK
300th Anniversary University Professor
John F. Kennedy School of Government
Harvard University President Emeritus
TRIBUTE TO NORMAN DORSEN

Unlike so many others who have paid tribute to Norman Dor­
sen who have known him for many, many years, I have known Nor­
man for fewer than three. Appropriately enough we first met over
lunch at the Volare Restaurant, opposite the law school and a fa­
mous meeting place for many faculty members. I imagine that Nor­
man and John Sexton often huddle over their favorite Italian dish
and concoct many of their wonderful plans for the enrichment of
the Law School.

Back then I was a mere Visiting Fellow and had to bother Nor­
man with the usual details. Although he was up to his eyes with
work, he was extremely kind and gave me time and advice, and
helped me settle in to the Law School. It was when I worked in the
library and moved around the corridors that I began to hear of the
remarkable career of a man who has served New York University
with such distinction for forty years. Fellow professors, students and
staff spoke with awe of his prodigious output, his administrative and
management skills and his commitment to standards of excellence.

However, when we talked it was much more about his first
love—civil liberties. Understandably, our conversations were very
much connected with his years of devoted service to the ACLU. Ini­
tially he was occupied with the United States and the persistent
challenges to guarding and protecting civil liberties, which were
under constant threat. However, in recent years the focus for Nor­
man has widened and deepened. His concern took on global
dimensions and his major role in founding the Global Law School
comes as no surprise. The law school is now open to a vast array of
talent from many parts of the world and this in turn has attracted
students from scores of countries. The rise of internationalism in
the Law School has been one of the greatest and most important
developments in the long and distinguished history of NYU. Nor­
man’s role was clearly pivotal and indispensable.

As we talked about the importance of human rights and the
search for justice in an unjust world, I often wondered what the
driving force was behind Norman’s incredible work rate and his
passion which infused everything he set out to do. Those who know
him well, and he has so many colleagues and friends, will have dif­
ferent answers to that question, but as a relative newcomer it did
occur to me that at least one of the driving forces was his commit­
ment to the truth. He dislikes humbug and with his prosecutorial
approach, he interrogates every new idea presented to him. (I can
almost feel his hovering presence with red pencil firmly in hand as he reads this tribute!

His first assumption when looking at a new idea or proposal is that it won’t work! “And if you differ with me, prove me wrong!” But accompanying this uncompromising, tough stance is a rare ability to listen. On more than one occasion, I’ve seen Norman change from excessive negativity to a qualified acceptance and then to enthusiastic support. I realized after several discussions on important ideas that he deliberately pushed me until I was forced to be much clearer in my own thinking. Of course he has been doing this for decades with his colleagues and with his students. He can tolerate most things but not a lazy mind. His commitment to the search for truth informed his work in and for civil liberties as well as his work as a teacher, scholar and administrator.

I have in a small way been involved in a similar search in my own country, South Africa. Thus it was that we had much in common. We often talk about the problems and challenges involved in searching for truth. In South Africa we distinguished between four components of truth, always recognizing that the total truth is forever elusive. The first component of truth as far as the Truth and Reconciliation Commission in South Africa is concerned is described as objective or factual or forensic truth. We prepared a comprehensive report setting out our activities and findings, which were based on factual and objective information and evidence collected by, received by, or placed at the disposal of the Commission. This task has two major demands. First, we were required to make public findings on particular incidents with regard to specific people—concerning what happened, to whom, where, when and how, and who was involved. To achieve this goal we adopted an inclusive policy of verification and corroboration to ensure that findings were based on accurate information. But we were also asked to make findings on contexts, causes and patterns of violations. It was this search for patterns underlying the gross violation of human rights that engaged the Commission at a very broad and deep level. In this forensic approach, one began to understand and appreciate the ambiguities that are always present.

The second component of truth we described as personal or narrative truth. Through the telling of their own stories, both victims and perpetrators have given meaning to their multilayered experiences of the South African story. Through the media these personal truths have been communicated to a broader public. Oral tradition has been a central feature of the Commission’s process. Explicit in the act is an affirmation of the stories that were being
told for the first time. It assisted us to attempt to “restore the human and civil dignity by granting them an opportunity to relate their accounts of the violations of which they were the victim.” It is important to underline that the stories we listened to didn’t come to us as “arguments” or claims as if in a court of law. They were often heart rendering, conveying unique insights into the pain of our past. To listen to one man relate how his wife and baby were cruelly murdered is much more powerful and moving than statistics that describe a massacre involving many victims.

By facilitating the telling of “stories,” the Commission not only helped to uncover the existing facts but assisted in the creation of “narrative truth,” the personal story told by a witness. In a sense we sought to democratize history. History was no longer the domain only of the historians; very ordinary people were making a critical contribution to the unfolding of narrative truth.

The third component of truth we described as “dialogical” truth. We distinguished between “microscope truth” and “dialogical truth.” The first is factual and verifiable and can be documented and proved. Dialogical truth, on the other hand, is social truth—truth of experience that is established through interaction, discussion and debate.

Finally, the fourth component of truth we described as healing and restorative truth. The act that governed the Commission required us to look back to the past but only in order to build a new future. The truth that the Commission was required to establish had to contribute to the reparation of the damage inflicted in the past and to the prevention of it ever happening again in the future. But for healing to be a possibility, knowledge in itself is not enough. Knowledge must be accompanied by acknowledgement and acceptance of accountability. To acknowledge publicly that thousands of South Africans have paid a very high price for the attainment of democracy, affirms the human dignity of the victims and survivors and is an integral part of the healing of a very damaged society.

It is this kind of experience that I brought to the many and varied discussions in Norman’s office. Civil liberties was key. Justice was an all-encompassing goal. Truth could assist in bringing about liberty and achieving a measure of justice. All of these qualities are central to Norman’s philosophy of life. His concern for civil liberties, for justice, and for truth are what informs his entire approach.
Norman Dorsen’s life and work is a living testimony to man’s aspirations to the highest and the best, rather than the lowest and the mediocre. I salute him.

ALEXANDER BORAINÉ
Professor of Law
New York University School of Law
I became acquainted with my good friend Norman Dorsen during my first term at the Supreme Court, when Norm was serving as a law clerk to Justice Harlan. His work on one case in particular showed to me that Norm was strongly committed to principle and indefatigably persistent. For weeks before and after the case was argued, he pursued my law clerk relentlessly through the halls of the Court, peppering him with arguments. Sooner or later, Norm calculated, my clerk would agree, exert his influence and induce me to see reason. Similar efforts directed at other chambers, it seemed to Norm, could doubtless secure a Court.

I know Norm was disappointed that the Court ultimately did not adopt his views in that case. I am grateful, however, that he has not held against me my authorship of the Court's opinion. Certainly Norm's views have prevailed in other cases, and far more often than not I have found myself in agreement with him. It is a distinct privilege to be asked to honor him on this occasion.

Just a few years after he left his clerkship and entered the academic world, Norm became a member of the ACLU's national Board of Directors, and soon its General Counsel. Between 1967 and 1971 he argued a number of cases in the Supreme Court. Three strike me as worthy of particular mention; each, I think, nicely illustrates Norm's vision of civil liberties.

*In Re Gault,* decided in 1967, raised the question whether constitutional protections afforded to criminal defendants apply to juvenile court proceedings. The case involved a fifteen-year-old boy, charged with making lewd phone calls, who was given no specific notice of the charges against him, was unrepresented by counsel at the hearing, was denied the rights of confrontation and cross-examination, and was convicted in part by his own self-incriminating statements. The juvenile court committed the youth to state custody for the remainder of his minority—six years—although, if prosecuted as an adult, he would have been subject only to a $50 fine or two months imprisonment.

Roger Baldwin, founder of the ACLU, objected to the organization's participation in the case. Indeed, during the Progressive


1. 387 U.S. 1 (1967).
Era early in this century, Baldwin had helped establish the kinds of procedures in question. The state's juvenile court procedures, Baldwin told Norm, were entirely defensible as a nonadversarial, noncriminal method of caring for troubled youths. Norm, however, saw the case not just as an opportunity to extend basic constitutional guarantees to a segment of the population that had until then been left constitutionally unprotected, but as an important step in a new civil liberties strategy: challenging the administration of social welfare programs that were defended as benevolent, but were in fact sorely unresponsive to the fundamental constitutional guarantee of due process. In this respect, Norm's attack on the juvenile procedures considered in *Gault* is analytically related to the later "due process revolution," stemming from *Goldberg v. Kelly* in the noncriminal context.

Norm's argument in *Levy v. Louisiana* was similarly far-reaching. The Louisiana statute at issue in that case denied "illegitimate" children the right to recover for the wrongful death of their mother. Norm argued successfully that the law violated equal protection. While Justice Douglas's opinion for the Court left unclear which standard of review applies to classifications based on "illegitimacy," it strongly suggested that Norm's recommended "heightened scrutiny" approach would prevail. And indeed it has. Norm's argument in *Levy* was important not just because it bolstered constitutional protection for children born out of wedlock, but also because it suggested that heightened scrutiny might apply to classifications not based on race. This possibility has been realized, of course, most notably in the case of gender.

The third particularly noteworthy case Norm argued was *United States v. Vuitch*, the first instance in which the issue of abortion reached the Supreme Court. *Vuitch*, heard the term before *Roe v. Wade*.

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3. *See id.* at 254.
Wade,\(^9\) involved the criminal prosecution of a doctor under a District of Columbia statute prohibiting abortion “unless . . . necessary for the preservation of the mother’s life or health.”\(^{10}\) Norm argued that the statutory reference to “life or health” was, as the district court had found, unconstitutionally vague. Criminal enforcement of such a statute, he argued, threatened to compromise the autonomy of doctors’ judgment regarding the medical advisability of abortion.\(^{11}\) Norm also defended the much broader position that women have the constitutional right to determine whether or not to continue their pregnancies.\(^{12}\)

The Court, of course, did not reach the broader constitutional question in Vuitch, reasoning that the lower court had not passed on that issue.\(^{13}\) But in responding to Norm’s arguments, the Court’s holding prefigures certain themes developed more fully in Roe. The Court construed the statute so as to protect the autonomy of the doctor/patient relationship.\(^{14}\) And its expansive interpretation of the word “health” seemed to recognize that the state may inflict multifarious harms when it requires women to continue unwanted pregnancies.\(^{15}\)

Norm’s influence on the Court’s civil liberties decisions extends far beyond the cases he argued. He authored or co-authored persuasive amicus briefs in a number of cases, beginning with the landmark “right to counsel” case, Gideon v. Wainwright.\(^{16}\) While these cases are too numerous to survey individually, I would like to suggest two in which I found Norm’s participation particularly helpful.

Both cases concerned the constitutional limits on executive authority. In the Pentagon Papers litigation,\(^{17}\) the question was whether the executive could impose prior restraints on publication of material it deemed dangerous to national security. Norm’s brief argued strenuously that such power would permit an administration to exempt itself from criticism, and that such prior restraints were totally impermissible. My concurrence approached this position (although I did have to acknowledge a “single, extremely nar-

\(^9\) 410 U.S. 113 (1973). Roe was first heard in the 1971 term but was carried over for reargument.
\(^{10}\) See Vuitch, 402 U.S. at 67-68.
\(^{11}\) Transcript of Oral Argument at 42-52, Vuitch (No. 84).
\(^{12}\) Id. at 52-60.
\(^{13}\) See Vuitch, 402 U.S. at 72-73.
\(^{14}\) See id. at 70-72.
\(^{15}\) See id. at 71-72.
\(^{16}\) 372 U.S. 335 (1963).
row class of cases" that had approved prior restraints in circumstances not then implicated).18 Norm, it seemed to me, was entirely correct that a decision the other way would have been a disaster for civil liberties.

The second case in this area was United States v. Nixon,19 in which then-President Nixon sought to invoke "executive privilege" to avoid relinquishing to the Special Prosecutor tapes that implicated the President in the Watergate cover-up. The contribution of Norm's brief was that it framed the dispute as far more than an intra-executive conflict between the Special Prosecutor and the President: The broad notions of executive privilege on which the President relied would effectively place him above the law, and that, Norm argued, was a matter that seriously threatened civil liberties.

Perhaps the greatest influence Norm exerted on the development of civil liberties came through his organizational role as first Director, then General Counsel, and most recently President of the ACLU. In those positions, Norm helped shape ACLU policy and litigation strategies, which in turn determined which civil liberties issues would come to the forefront. As an outsider to the organization's workings, I cannot chart in great detail Norm's contributions in this respect. I can, however, discuss one crucial decision made during Norm's watch that I think deserves special recognition: the decision to press for constitutional recognition of women's rights.

Before the ACLU established its extraordinary Women's Rights Project in 1970, the Supreme Court had never found any gender-based discrimination to be constitutionally infirm. Its rulings in this area were really quite remarkable. In the infamous 1873 Bradwell v. Illinois decision,20 for example, a member of the Court saw fit to proclaim that "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."21 Even midway through this century, the Court's understanding of the constitutional implications of sex discrimination had not advanced appreciably.22 It was in this context

18. See id. at 726 (citing Near v. Minnesota, 283 U.S. 697, 716 (1931) (discussing wartime emergencies)).
20. 83 U.S. (16 Wall.) 130 (1872).
21. Id. at 141 (Bradley, J., concurring).
22. In Goesaert v. Cleary, 335 U.S. 464 (1948), for example, the Court upheld a Michigan statute that prohibited women other than wives and daughters of bar owners from working in bars. The Court justified this result in part by stating that "[t]he Constitution does not require legislatures to reflect sociological insight, or shifting social standards" and by hypothesizing reasons why Michigan's legislative choice might be considered rationally based. See id. at 465-67.
that the ACLU Women's Rights Project brought a series of well-chosen suits to the Supreme Court.

In *Reed v. Reed*, the Court for the first time invalidated a gender-based law as a violation of equal protection. The Court purported to apply the traditional "rational basis" test, but in fact the level of judicial scrutiny was considerably higher. I favored explicit recognition of the new heightened standard, and in subsequent cases I pressed for the ACLU's recommended "strict scrutiny." I was never quite able to obtain a Court for this position, but the result of the cases brought by the ACLU was an "intermediate" standard of review. While this standard has led the Court on some occasions to unfortunate results, it has made the constitutional guarantee of equal protection more real for the majority of our population who had previously been virtually unprotected. We all owe a debt of gratitude, I think, to Norm Dorsen for his unwavering support of the ACLU's initiatives in this area.

Norm's tenure as President of the ACLU seems to me truly remarkable. Leadership of a group of talented, passionate people cannot be an easy task even in the calmest of times. And the first few years during which Norm served as President were not exactly calm. One of the first major issues Norm had to confront was the controversy over the ACLU's representation of the American Nazi Party in its attempt to secure a permit to march in Skokie, Illinois. The ACLU itself divided sharply over this issue. The organization had traditionally supported the First Amendment rights of unpopular political groups, from radicals during the post-World War I "red scare," and Communists during the McCarthy era, to the Klan in *Brandenburg v. Ohio*.

But supporting the rights of Nazis to march in Skokie seemed a far different thing to many ACLU members: Skokie had a substantial Jewish community, many of them Holocaust survivors to whom a Nazi march would be particularly offensive. The ACLU's stance was met with outrage by many, and by Jewish groups in particular. Old allies such as the National Lawyers' Guild denounced the ACLU's position. Thousands of members...

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resigned, and the ACLU faced enormous financial and organizational problems.  

Throughout the crisis, Norm stood firm. Under his leadership, the ACLU overhauled its internal structure to cut expenses and rebuild its membership. More important to me, it launched an extensive public outreach program to explain its position as one of principle and to regenerate the organization’s and the nation’s commitment to civil libertarian values. By the beginning of the 1980s, the ACLU had effectively recovered from the Skokie crisis, and it may well have been a stronger organization than it was before.

Norm’s remaining years as President were filled with similar challenges, including controversies over affirmative action, First Amendment protection for pornography, and restrictions on campus speech. At the same time, he faced a federal judiciary, including the Supreme Court, that seemed to be far less receptive to the organization’s conception of civil liberties than it had been in the past. Norm guided the ACLU admirably through those years and now, after fifteen years as President, he has turned the leadership over to other hands.

I wish my dear friend Norm Dorsen well in his “retirement” from the ACLU. I cannot imagine, however, that his contributions to civil liberties will be any the less than before. Congratulations, Norm, on a job well done.

WILLIAM J. BRENNAN
former Associate Justice
Supreme Court of the United States

29. Id. at 327-28.
30. See id. at 329-31, 337-38.
31. See id. at 330-31, 338.
TRIBUTE TO NORMAN DORSEN

I am delighted and honored to participate in this tribute to Norman Dorsen, my classmate in the Harvard Law Class of 1953 and my friend ever since. I know of no classmate who more richly deserves an appreciation of his remarkable accomplishments—as teacher, scholar, advocate, and leader—over the last 51 years.

In the brief time I have today—one-third of Andy Warhol’s fifteen minutes in the limelight—I will not try to relate all that I, as a constitutional law maven, associate with No't'm’s career; for example, his successful arguments before the Supreme Court in such landmark cases as Levy v. Louisiana\(^1\) and In re Gault.\(^2\) Nor will I speak of his role at this law school, whose dramatic rise in quality and reputation surely owes much to Norm’s contributions, or his skillful leadership of the ACLU during some difficult years.\(^3\) Other speakers, I am confident, will address those contributions. Let me instead illustrate on a personal level what Norman has meant to me and my family.

Thinking back to our law student years, I—like our classmate Ken Karst—remember Norm as a young man with an "exceptionally sunny disposition in good times and bad."\(^4\) But this sunny disposition was not that of an empty-headed youngster; rather, it was a reflection of Norm’s equilibrium as well as ebullience, and his inexhaustible energy and thoughtfulness, even then.

After graduating from Harvard, I, as a Navy veteran, went to New York City to clerk for Judge Learned Hand and Norm entered military service in Washington. Though the geographical separation barred personal contacts then, my wife and I watched Norm’s participation in the historic televised Army-McCarthy hearings of over two months.

I do not know what the Nielsen ratings were for those many hours of television from April to June 1954, but I do know that many viewers were transfixed by the hearings. As Norm himself has said, “[Joe McCarthy’s] constant exposure to the public during two

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1. 391 U.S. 68 (1968) (applying "heightened scrutiny" to legislation discriminating against children born out of wedlock and launching the Court’s development of “intermediate scrutiny” in equal protection cases).
2. 387 U.S. 1 (1967) (extending for the first time due process protections to defendants in juvenile courts).
months of hearings helped to erode his immense power and led eventually to his censure by the Senate in the fall of 1954.\footnote{5. \textit{Norman Dorsen, Frontiers of Civil Liberties} 67-68 (1968).}

In 1954, my wife was pregnant with our older son, Daniel. Her pregnancy was a difficult one, and her doctor ordered her to bed for some months. Norm probably does not know how important a role he played in Barbara’s life and mine during those days.

Confinement to bed for several months risks endless boredom. Barbara and I owned no television when the hearings began; but as soon as I learned of them, I went to Macy’s on 34th Street and bought the least expensive set I could find. During the day, Barbara watched the hearings religiously. They probably saved her from the insanity that boredom can produce. She was absorbed not only by the antics of Senator McCarthy and Committee Counsel Roy Cohn as well as the fine work of Special Counsel for the Secretary of the Army Joseph Welch, but also by the image of Norm Dorsen on that small television screen, usually sitting behind the witness of the day. For he had become an Assistant to the General Counsel of the Army.

I, of course, was busy in Learned Hand’s chambers during those months, so I could not see the live hearings. When I would reach home in the evenings, Barbara would tell me about the events of that day (and for how long Norm had been on the screen). Fortunately, television carried evening rebroadcasts of the hearings, and I would sit on our bed with Barbara to see the reruns until we’d fall asleep. We were so absorbed in them that we were rather sorry when the hearings ended in mid-June—those hearings were far more fascinating, I assure you, than today’s “reality” features on TV.

By mid-summer of 1954, I went to Washington for a clerkship with Chief Justice Earl Warren. After some doubts about Barbara’s ability to accompany me, her doctor gave permission. The pregnancy went well, no doubt in part because of the hearings on our TV twice a day. Our son was born on January 4, 1955, with a Bris, a circumcision ceremony, at which Felix Frankfurter and Earl Warren were the co-godfathers (the next morning, the Chief thanked me for inviting him to the ceremony and told me that, after his many years of public life in California as District Attorney, Attorney General, and Governor, this was the first time he had ever been invited to a “Bar Mitzvah”!).

I think it appropriate today that I, belatedly, proclaim Norm Dorsen as the honorary third godfather of Daniel Gunther—Norm,
after all, contributed far more to Barbara’s well-being during her pregnancy than either Justice Frankfurter or Chief Justice Warren had.

GERALD GUNTHER
William Nelson Professor of Law Emeritus
Stanford University
TRIBUTE TO NORMAN DORSEN

Since 1966, Norman has been my mentor, teacher, co-conspirator and friend. I believe that Norman is the best institution builder in American legal education in this century. Let me defend this extravagant claim. Most obviously, he took the ACLU, which was an important but very small and somewhat marginal group, and turned it into a much larger, more vibrant, and more important force in American society. He did similar work with the Lawyer’s Committee for Civil Rights. He, more than anyone else, has created the vibrant new Global Law School Program that we have at NYU School of Law. Of the institutions Norman has built, I want to talk about two that have special meaning for me: the Arthur Garfield Hays Program and the Society of American Law Teachers.

For almost thirty years I have been co-director with Norman of the Arthur Garfield Hays Program, and in the early years of the program Norman was a real lawyer. He litigated some of the most important civil liberties cases of our time. Levy v. Louisiana first recognized that policies discriminating against children whose parents are not married are constitutionally suspect. Flast v. Cohen held that taxpayers have standing to challenge governmental programs alleged to violate the Establishment Clause. United States v. Vuitch was an important precursor to Roe v. Wade. As a lawyer, Norman combines incredible imagination, vision, and empathy with the cause, with the most excruciating, meticulous attention to detail. Anyone who has ever worked with him knows that, as a hallmark of his work, everything goes through many drafts.

The Hays Program is a small program. Each year we select five or six outstanding third-year NYU Law students who are outstanding both because of their commitment to civil liberties and also because of their ability to do high quality work. The program is small and we all get to know each other very well. We learn from Norman and benefit from his extraordinary skill as a mentor. Norman has an amazing capacity to listen and hear. And he is so well connected and widely admired that he can make connections and help Hays fellows and colleagues to be more effective and happy in our lives. The Hays Program has become a “Who’s Who” of public interest law in the United States, but it’s also very much like a family

to us. Norman keeps us in touch, and we continue to support one another.

Another organization he created is the Society of American Law Teachers, founded in 1974 with Tom Emerson, Ruth Bader Ginsburg, and others. The Society of American Law Teachers (SALT) is dedicated to improving American legal education. It is the only membership organization for law teachers in the country and now has over 800 members. It is one of the most effective organizations in the country at helping law teachers be better teachers, promoting diversity in the profession and in the academy, and weighing in on important legal cases and important bills in Congress. For the most part SALT does all that without any paid staff and no resources, except for its modest dues. It depends entirely on the volunteer efforts of people who are already seriously overextended. Norman created this magnificent organization.

Both of these programs—the Hays Program and SALT—also pay tribute to the fact that Norman is one of the most small "d" democratic people in the world. He runs a great meeting and assures that ideas with which he disagrees will be heard fully and fairly. Over the years he has allowed both the Hays Program and SALT to grow in ways that he would not necessarily have foreseen or even have supported, but that nevertheless prove to be wise.

For all this and more, I say, "Thank you, Norman."

SYLVIA LAW
Elizabeth K. Dollard Professor of Law,
Medicine and Psychiatry
New York University
TRIBUTE TO NORMAN DORSEN

How do you say “thank you” to a colleague who, for 35 years, has been a mentor, a dear friend, and an inspiration? I met Norman Dorsen in 1967 when, three years out of law school, I joined the NYCLU as a staff counsel. Norman was, by then, a leading figure in the civil liberties world. He showed that it was possible to straddle the gap between a cloistered academic existence and the life of an activist lawyer. I watched while he took the early cases challenging the legality of the war in Vietnam, and used his academic expertise to shape them, in the course of a brilliant oral argument before the Second Circuit, into a powerful analytical challenge to a runaway Executive branch. I never forgot that lesson in the possibility of bridging two worlds.

In 1972, while I was serving as Assistant Legal Director of the ACLU, Norman encouraged me to teach a course in constitutional litigation as an adjunct professor at NYU. Norman persuaded the curriculum committee that the course was worthwhile, and that I would not do irreparable injury to the students. In 1973, Norman consoled me when the NYU Personnel Committee decided to pass on making me a permanent offer. In 1974, he succeeded in persuading the Committee to give me a chance at full-time teaching. In the 27 years that we have served together on the NYU Law faculty, Norman has been the institution’s First Citizen. Three successive deans’ have turned to him for counsel and guidance, and, more importantly, for generous service on the school’s crucial organs of self-governance. Norman has spent more time on the NYU Personnel Committee than the Eighth Amendment allows. His commitment to intellectual excellence, coupled with an unswerving insistence on toleration for points of view with which he disagrees, and his knack for fair procedure, is one of the reasons NYU Law School has emerged as an institution of excellence blessed with a remarkable sense of toleration and good will.

During the early years of my academic career, Norman and I (together with Paul Bender and Sylvia Law) worked intensely on the Fourth edition of Political and Civil Rights in the United States, a work explicitly designed to link academic research with the practical needs of civil rights/civil liberties lawyers. Norman saw to it that we respected the high standards that Tom Emerson and David Ha­ber had set in the earlier editions of the work. Norman presided over the decision to split the work into two volumes to reflect the enormous explosion in the law, and ruefully noted that, like
Diderot and the French encyclopaedists, we were the last generation to purport to be able to put all human knowledge between the covers of a single book.

In 1981, Norman, by then the President of the ACLU, encouraged me to take on the daunting role of ACLU National Legal Director at the beginning of the Reagan era. As with Norman’s presence at NYU Law School, his stewardship of the ACLU was wise, generous and unfailingly fair. He made it possible for me to devote all my energies to substance, immersing himself (along with Ira Glasser, the ACLU’s indefatigable Executive Director) in the less-rewarding, but enormously important operational details of the organization. Norman helped build a great and important stage on which others could perform, and never fell prey to ego or petty jealousy. I didn’t take an important step as ACLU Legal Director without seeking Norman’s counsel.

After I returned to full-time academic life at NYU in 1987, Norman and I, now in the amateur phases of our careers, thoroughly enjoyed the rise of NYU Law School to national preeminence, often commenting on how fortunate we were to serve on a faculty of such extraordinary intellectual power. As usual, Norman was in the thick of the institution’s good fortune. His most recent contribution—the building of a Global Law School program that has transformed the physical and intellectual life of the school by bringing distinguished faculty and students to NYU from around the world—is a testament to his unfailing energy and good judgment.

Thank you, my friend, but don’t think that you’ve earned a slow fade into the sunset. You are the hub of many worlds. Your small army of friends and admirers continue to rely on you for wise counsel, generous assistance, and untiring institution building. Not bad for the first forty years.

BURT NEUBORNE
John Norton Pomeroy Professor of Law
New York University School of Law
TRIBUTE TO NORMAN DORSEN

Some nine years ago, I wrote a tribute to Norman Dorsen for the Harvard Civil Rights-Civil Liberties Law Review. In it, I spoke of Norman's background, his familiarity with history, including some of America's sorry examples of civil rights despoliations or deprivals, but also his experience of seeing the rise and fall of the Third Reich, and particularly its suspension of those portions of the Weimar Constitution that made up the German Bill of Rights. That background included his prestigious and civil rights-educating clerkship with Justice John Marshall Harlan, the grandson of the lone dissenter in Plessy v. Ferguson, the infamous 1896 case that was not overruled until Brown v. Board of Education. After his clerkship, Norman participated in the Army-McCarthy Hearings as an assistant to the General Counsel of the Army, and they, as we know, were the first television exposure of the "cruelty and recklessness," in Counselor Joe Welch's words, of the Wisconsin Senator who created such a danger in the 1950s to the civil liberties of all Americans.

Norman has inspired us all—his hundreds or thousands of students both at NYU and at other law schools; the readers of his books, his essays, and his law review articles; us judges who have heard his arguments; and the thousands of members of the ACLU. As I said nine years ago, "Norman towers above the crowd as a defender of the civil liberties of all."

And lest we forget, civil liberties still are endangered. I am not speaking just of the United States of course, but even in the United States we continue to have dangers that have been pointed out by Norman time and again for our edification. In what follows, I track his 1983 introduction to the 1984 ACLU Report on Civil Liberties, titled Our Endangered Rights.

While we have outlawed obvious forms of preference and exclusion, Norman says that we have not eliminated them, and subtler techniques of discrimination, using a wink and code words rather than a more blatant message, do continue to go on. Not only in

2. 163 U.S. 537, 552 (1896) (Harlan, J., dissenting).
4. Oakes, supra note 1, at 316.
5. Id.
times of economic stringency but even in so-called prosperity, entitlements to the dependent poor and the powerless are the first casualties. The discrepancies in wealth today are unbelievable. Many suggest that the tax cuts recently proposed, including abolition of the estate tax, will further widen that discrepancy.

International tensions continue, and they affect the United States: ongoing is a trial in the Southern District of New York for the bombings of the American Embassies in Tanzania and Kenya. And while the tribulations in Ireland don't much impact the United States at this point, they nevertheless have many ramifications abroad.

Norman refers to these three historic sources of constitutional instability—discrimination, economic stringency and discrepancies, and international tensions—as being, in 1984 as today, compounded by the resurgence of a fourth: the excesses of religious fundamentalism. He said:

The issue is of course not Christianity, which is rooted in humanitarianism and altruism of the Sermon on the Mount. It is rather the zealotry and insensitivity evinced by some of its modern leaders. Thus, the Moral Majority and its allies not only want their children to pray in school; they want everyone's to do so. They not only want to prevent fundamentalist women from choosing to seek abortion; they want to keep every woman from this choice. They not only want their children to learn “scientific creationism” as an alternative to science; they want every child to learn it. They not only want to decide which books their children cannot read; they want to decide for the children of all. They not only want to spend their own money on church schools; they want everyone to be taxed for this purpose. It is sadly ironic... that such anti-civil libertarian attitudes are presented in the name of religion.7

And what about the threats of governmental intrusion on privacy? Is that any less of a problem today (as Norman has, time and again, pointed out over the years) than it was yesterday or twenty years ago or forty years ago? Free expression, equality, due process, and privacy are the principles by which Norman has lived and stood for, advocated and taught.

Withal, Norman, using his own words, has “deep affection for the United States, for its many gifts to its people, for its leadership in creating the first constitution that is both written and judicially enforceable, and for its record in advancing liberty in so many

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7. Id. at xi.
ways." It has been his goal in life to further the efforts of our country to meet its full promise. He does not eschew criticism of the worst in our heritage, and he pays due homage to the best of that heritage. This has been, for him, a sometimes frustrating but ultimately rewarding task. I commend the editors of the Annual Survey for having elected to honor Norman on this delightful occasion.

JAMES L. OAKES
Senior Judge
U.S. Court of Appeals for the Second Circuit

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8. Id. at xvi.
TRIBUTE TO NORMAN DORSEN

It is an enormous delight for me to contribute to this dedication ceremony honoring Norman Dorsen. It did require, however, that I go back and note the fact that I wrote for the *Annual Survey* thirty-seven years ago. Not only did I discuss antitrust, I made some confident predictions. I noted with alarm that there had been five hundred corporate mergers in the previous year, but pointed out that that would level off as time went on. Well, five hundred would be a quiet month at the Federal Trade Commission these days.

I am delighted with the *Annual Survey*’s decision to include in this dedication Harriette Dorsen, my good friend and former student, the formidable Dorsen young ladies, and, of course, to honor Norman. During my professional career no school has moved up as much in quality, stature, and influence as NYU Law School. As someone who was here much earlier, at one of the turning points in its history, I second what Dean Sexton said: no person has had more to do with the school’s success—not the wonderful former deans, superb scholars and faculty members, or students and administrators—than Norman.

As you heard, Norman joined the faculty in 1961. I joined in 1964, and—Norman may not remember this, but I do—withina month or so we took a long walk along the river. I don’t want to get too romantic about this—it was the Hudson River, it wasn’t the Seine, it wasn’t the Thames—you took your life in your hands in those days walking along those docks. But the idea was to discuss—Norman’s idea was to discuss—his vision of what this law school was to be. I remember it rather well: an array of serious and productive scholars who would range from the philosophical to the practical, a diverse student body—but that was already true at that time—a rigorous curriculum grounded solidly in theory but which would incorporate practical thought and a commitment to public service, an outlook that was national rather than local—now you would say international, but then national was an ambitious goal, and a long-term goal of challenging—in terms of quality and influence—the very best law schools in this country. Some few on the faculty in those days did not hold to that vision. They thought it was overreaching. They thought that, for better or for worse, the school ought to be more parochial, less ambitious, and more inclined to help students pass the bar exam than to learn national policy.

Everything Norman has touched since that day—the Hayes Program, which he brought to preeminence, the current Global
Law Program, which in my mind sets the standard for what international law programs are supposed to be in this country—has achieved unprecedented success. Norman has been unyielding in pursuit of quality. As a former dean I know that tradeoffs are essential in academic life, but I have never seen Norman trade-off or compromise those notions of quality in any way—in faculty, students, or curriculum. While the long list of former students, members of his program and colleagues who have stayed attached to his institutions and this law school certainly attests to the influence he has had, the amazing thing to me is that this law school that now surrounds us forty years later is very much the law school that Norman described on that long walk. It is the law school he had in mind forty years ago.

Norman has been very active in public service, including his immensely successful tenure as head of the ACLU, and has received more than his fair share of degrees, medals, and other honors. But in all our years of friendship, in all our discussions of academic matters—and there have been many—I have never heard Norman speak, nor do I have the impression that he ever thought of himself, as anything but primarily a professor of law at NYU. It is given to very few people to see the vision of what they hope for a law school realized in their own professional career. His achievements are dazzling but to my way of thinking—and equally important—is the constancy and consistency of his dedication to this law school. For its students, its faculty, and for everyone associated with Norman, every step of the way he has been there. That is why it is, in my view, so appropriate for this journal to honor him in the way it has.

ROBERT PITOFSKY
Professor of Law
Georgetown University
TRIBUTE TO NORMAN DORSEN

I am honored to have the opportunity to write about Norman Dorsen. My relationship with Norman began when I was a law student. I am one of some 200 people who have been Arthur Garfield Hays fellows (or fellowettes), a program created by Norman Dorsen at New York University School of Law. When I was a “Hays,” Norman ran the program with Professor Sylvia Law; more recently, they have been joined by Professor Helen Hershkoff. I am therefore the recipient of a very special education, and I will sketch briefly some of what I have learned as a student of Norman’s.

A word of explanation is in order about the Hays Fellowship. In 1958, a fund was endowed at NYU School of Law in honor of Arthur Garfield Hays, the great civil libertarian. Since then, a small number of third-year NYU students annually are chosen as “Hays Fellows.” As a Hays, one receives money towards tuition as well as course credits, and one does a mixture of academic research and hands-on work on issues such as free speech or welfare rights. Hays fellows have helped on many cases that went to the Supreme Court (such as Flast v. Cohen,1 the Pentagon Papers litigation,2 and United States v. Nixon3), as well as on thousands of lawsuits in the lower courts, on topics from discriminatory denial of homeowners insurance, to unlawful limitations of access to abortion, to refusals to treat HIV patients.

While I was a Hays, in 1974-75, I worked on a First Amendment book burning case, under the tutelage of Burt Neuborne and Alan Levine, who were then at the American and the New York Civil Liberties Unions. The case emerged from a small city in North Dakota—Fargo—whose school board had banned several books, including Slaughterhouse Five, by Kurt Vonnegut, and Deliverance, by James Dickey. Townsfolk made miserable the life of the teacher who had assigned the books. One of my tasks was to digest depositions, and the record I read seemed more like a novel that Vonnegut might have written than real life. For example, the city had a local group, a Button and Bows Society, to which the teacher’s wife had belonged; she was excluded after the school children were assigned Slaughterhouse Five to read. In one transcript I read, a woman deposed asked the New York Civil Liberties Union lawyer why he had a beard. He responded, without missing a beat, that his

mother wondered about that as well. During the litigation, Kurt Vonnegut became personally involved, and one of the highlights of my student days was to meet him and have the moment recorded in a photograph taken by Jill Krementz.

Most of the work was, of course, far less glamorous. I spent hours in the law library doing research to help create the supplement for *Political and Civil Rights in the United States*, a volume first begun in 1952 by Thomas Emerson and David Haber, who in 1967 were joined by Norman Dorsen. By the 1970s, Emerson, Haber and Dorsen’s *Political and Civil Rights in the United States* had grown by thousands of pages and required regular supplementation. Not only was the growth itself a tribute to the work of Norman Dorsen, who was also by then leading the American Civil Liberties Union, the subsequent decision to stop supplementing the book was yet another tribute: the subject matter had permeated so many fields of law that it could not be contained within any given two-volume set. Norman and the ACLU turned to other forms of publication, such as series of works on the rights of women, the rights of employees, and even the rights of lawyers (by Steve Gillers, of course).

Those who worked on these projects technically were not all Hays fellows. Some had other titles, all evidence of Norman’s fundraising skills and his understanding of how important it was to give honor to many people who had been constitutive of the civil rights-civil liberties community. Some were thus Robert Marshall fellows, Roger Baldwin fellows, Harriet Pilpel fellows, Reed Foundation fellows, Palmer Weber fellows, and more recently Tom Stoddard fellows.

While such fellowships now span 40 years, what we all have in common is what we learned under Norman’s tutelage. I provide but a few of the many lessons that he taught. First, Norman teaches action. Action may sound like something one cannot teach, but Norman did. He knew about “multi-tasking” long before it became a buzz word, as he worked simultaneously in several modes, litigat-

4. THOMAS I. EMERSON, DAVID HABER & NORMAN DORSEN, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES (1967).
ing, organizing, and lobbying, all with a common purpose: to make the world better for people who were not like himself.

Norman is an organizer par excellence. If the Hays Program is one example, a second is the Society of American Law Teachers (SALT), which he helped to create in the early 1970s. He saw that, while law schools had an organization, the American Association of Law Schools (AALS), law teachers did not, and moreover, that law teachers had common concerns about who had access to legal education and what its content could be. When first conceived, SALT stood as an outsider to the AALS, but over the years, many of the issues first embraced by SALT—such as the need to diversify the student bodies and faculties of law schools—became constitutive of the AALS. Appropriately, Emma Coleman Jordon was the first to have been both the president of SALT and then, subsequently, the president of the AALS.

Thus, a first lesson was about action, that it could take many forms, and that it had to be imaginative and generative, ahead of current conversations. Norman's second lesson was not only to act creatively, but to organize such action in a fashion that interacted with extant institutions and generated new ones. One of Norman's most famous constitutional victories identifies him as a person fighting institutionalization. *In re Gault*, which he argued in the United States Supreme Court, stands as a landmark to prevent children from years of incarceration through the juvenile "justice" system. Yet, even as Norman fought institutions and institutionalization, he himself was—and is—an institution maker, builder, and perpetuator.

I should also add that I not only learned from Norman about the importance of grounding work in institutions, I have also followed as best I could his lessons. As I helped to shape the Arthur Liman Public Interest Program and Fund at Yale Law School where I teach, I had Norman's model in mind. Thus the program at Yale includes both student and graduate fellows, programs, colloquia, publications, and projects. We have convened major conferences on legal services, changing rights of workers, welfare regulation, and criminal justice. We have supported graduate fellows working on advocacy for the institutionalized elderly and on rights of non-United States citizens on the Texas border, and our student fellows have drafted manuals on how to continue receiving welfare benefits while attending school and have made films on how teenagers can

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respond during police encounters. Norman’s example provides me with constant reminders of what else we might also be doing.

The Hays fellowship is not only a program that transforms the third year of law school for students at NYU, it is an institution in our lives beyond law school. Every five years, Norman and Sylvia organize reunions, plucking us back into the civil liberties fold. They are wise to do so, because some of us may lapse into ambivalence towards some of the civil liberties approaches with which we were raised. An obvious example is hate speech, but there are others. What I like about Norman is that he is textured; he knows that the issues are hard, and he is open to exploring controversy. For the 30th anniversary of the program, he and Sylvia asked: about what civil liberties issue have you most changed your mind since in law school? At the 35th anniversary, the discussion was about conflicts between rights, such as the debate about the role of speech in the context of Title VII of the Civil Rights Act and in the context of protests about abortion and access to it. Norman is willing to name and face such conflicts. He does not undersell the other side of the story, and he is willing to recognize the pain, even as he takes a position.

The topic of the 40th anniversary reunion was the relationship between civil liberties and human rights. That topic illuminates a third Norman Dorsen lesson: Don’t assume that the issues and the answers remain the same. In the 1980s, Norman Dorsen began to appreciate the breadth of transformations outside the United States, the growth of constitutionalism in many countries, the role of globalization in the economy, and its relevance for law schools in the United States and for civil liberties everywhere. Once again ahead of—and creating—the curve, he (joined and supported by John Sexton) began to shape the Global Law School Program that has since become emblematic of NYU Law. Further, Norman immersed himself in the work of international human rights, through the Lawyers Committee for Human Rights and through the creation of the International Association of Constitutional Law, with its United States branch. In 2001, he helped to launch *I-Con*, a new international journal of constitutional law, to be published by Oxford University in conjunction with NYU’s Global Law School Program.

If a third lesson is thus flexibility and foresight, a fourth is friendship. Norman teaches a lovely amalgam of camaraderie and networking. Organizing Hays events is but one example. (After they are held, he sends pictures.) But he does not only remember you on five year intervals. He’ll call you up and suggest you get in
touch with someone; he’ll put you on a committee, have someone ask you to write a brief or a law review article. Norman also makes time for a visit and keeps track of events, from life events to work projects—sending notes, hand-typed or scribbled and, more recently, by email. A good many of the connections are to rope you in to do work in some form or fashion, and this is work mixed with friendship. Norman’s networks are not limited to students and law professors; they extend to all with whom he worked. For example, at one Hays reunion, Norman organized a memorial service in honor of Dede Fuchs Carson, the Hays administrative assistant from 1963-67; her family and the fellows who knew her came together to mark her contribution to civil liberties work.

Norman thus teaches accessibility. When you call him on the phone, half the time he answers the call himself. If you do get an assistant on the line, he or she does not ask who you are and why you are calling. Norman takes calls without having them screened to ensure that one crosses some invisible threshold of importance.

In terms of focus, it was obvious from Norman that students are people he takes seriously. The opening of the brochure on the Hays program states that the “core of the program is the students.” Each year, Norman and Sylvia send out a list of current activities, describing in detail what each current Hays fellow is doing. By telling us their names and what they are working on, we are reminded, yearly, that what matters is continuing work, by new young lawyers, committed to engendering rights.

Norman not only promotes and focuses on the work of students; Norman invites students to be his peers. Since becoming a law professor, I have appeared on programs and conferences with others who have been my teachers. I have noticed that some insist on reasserting that role, figuring out a way to remind the audience that I was their student, and thereby, in some sense, attempting to cast me in that role once again, to make me their junior. But never Norman, who treated me like a peer when I was a student and who has treated me like a peer ever since. When I visited at NYU in 1996-1997, I watched with delight and amusement as Norman presided over a Hays dinner and current fellows disagreed with much of what he had to say—proof positive of his continued commitment to forms of equality rare in the academy.

This brings me to another aspect of what Norman has taught. I am one of many in a subclass of Hays fellows/fellowettes who teach law, including Sylvia Law, Liz Schneider, Marty Guggenheim, Steve Gillers, Sue Deller Ross, Dan Pochoda, David Rudofsky, and so many others. It was not until I was teaching, and teaching for a
while, that I understood one other gift from Norman, one other reason for admiration. He openly embraced a rights-based agenda for all of humanity, he did it while teaching constitutional law, and he therefore had to pay the price that some would discount his scholarship because he was honest and forthright about his goals to better the world.

I have discussed at length Norman's activism. In the legal academies in which many of us make our homes, such activism is not always celebrated. While none of us can point to a scholar without an agenda, without political views that are at the core of that person's scholarship, many of our colleagues make a claim to occupy a scholarly space outside of their political and social vision. Norman openly tied his scholarship to his viewpoint, and he did so in an era of constitutional scholarship quite taken with "neutral principles" and "passive virtues." Once I became a law teacher, I learned firsthand what I had been unaware of as a student, something important about who Norman Dorsen is. It was not cost free then (and it is still not cost free now) to make the choice he did, not only to accept the label activist but to take it on, wear it, and demonstrate to all of us the value of doing so.

In a recent essay in a symposium on the "Justice Mission of American Law Schools," Norman wrote that three elements were required of a law school in order for him to be proud of it as a place. He aspires—he told us—to work in an institution that has "quality, variety, and heart." Quality he defines as "intelligence, rigor and wit." Variety means for him a range of scholarly interests, intellectual styles, and programs. For Norman, "heart" is a "moral conception of the law, an approach that takes into account the human consequences of legal rules and structures."

Norman has all the elements that he has called for in institutions. He has them, and he has taught others to join with him in creating such institutions. Thus, I offer my heartfelt thanks to Norman, and I am grateful to the NYU Annual Survey of American Law for giving me the opportunity to have the occasion to say so in print.

JUDITH RESNIK
Arthur Liman Professor of Law
Yale Law School

TRIBUTE TO NORMAN DORSEN

I am honored to help you honor Norman Dorsen. Of Norman’s many important contributions to law and human rights, I will focus on one set of such contributions, which alone warrant the dedication we are celebrating today. I am referring to Norman’s inspired and inspiring leadership of the American Civil Liberties Union, including through a period that expert observers consider a critical turning point in the ACLU’s development.1 Experts have credited Norman with playing a key role in building the ACLU into a major force, propelling the so-called rights revolution during the 1960s and beyond.

Some of Norman’s remarkable contributions I had the pleasure of observing firsthand, most closely while I served on the ACLU’s National Board under his leadership as president, from 1983 until 1991. I have learned about many further aspects of Norman’s enduring contributions to the ACLU and civil liberties from other colleagues and observers, including the historian Samuel Walker, whose history of the ACLU was originally published by Oxford University Press in 1990.2 Walker repeatedly cites Norman’s influential involvement in important ACLU milestones, going back to the 1960s.3

Under Norman’s leadership, the ACLU grew in every way. To be sure, many other individuals also played key roles in these developments. Norman’s signal talents include the ability to enlist, and to work effectively with, other talented colleagues, including identifying and mentoring junior colleagues. Still, enormous credit is due to Norman’s own efforts. On his watch, the ACLU’s work expanded to new rights, beyond the traditional civil liberties/civil rights agenda, to encompass everything from minors’ rights to reproductive freedom. With Norman’s active prodding, the ACLU expanded its strategies, which typically had centered on filing friend-of-the-court briefs, to a more engaged, activist role, including direct client representation.4 And while Norman was at the helm,

4. See id. at 285.
the ACLU expanded its geographic reach beyond the traditional civil liberties strongholds.

At the end of 1999, a New York Times editorial praised, as a hallmark of the second half of the twentieth century, the great strides toward actually realizing our national ideals of liberty and justice for all.\(^5\) It gave the major credit for this accomplishment to two organizations, the ACLU and the NAACP.\(^6\) In turn, the major credit for the ACLU's crucial role in this historic breakthrough goes to the individuals who were crucial in shaping that role, including Norman Dorsen.

Some of Norman's historic contributions to the ACLU—and, hence, to all fundamental freedoms for all people—were public and prominent. For example, in his capacity as one of the organization's general counsel, Norman wrote briefs and made oral arguments before the Supreme Court in many cases that became landmarks of liberty, including *In re Gault*,\(^7\) the first case to impose constitutional protections on the so-called juvenile justice system—which actually had been fraught with injustice; *Levy v. Louisiana*,\(^8\) the first case to uphold the rights of what the Court called "illegitimate" children; *Tate v. Short*,\(^9\) which struck down the then-common practice of imprisoning poor people only because they could not afford to pay the fines for their minor traffic offenses; and *United States v. Vuitch*,\(^10\) the first Supreme Court case asserting that a woman has a constitutional right to terminate her pregnancy. In these and other notable cases, Norman persuaded the Supreme Court to expand both the rights deemed protected and the people deemed entitled to exercise those rights.

Going beyond courts of law, Norman also spearheaded the ACLU's pioneering efforts to advocate rights in the court of public opinion. For example, he launched and edited an innovative set of handbooks that summarize civil liberties issues in plain language for non-lawyers.\(^12\) He also strategically organized national conferences that shaped public and press perceptions regarding civil lib-


\(^6\) Id.

\(^7\) 387 U.S. 1 (1967).

\(^8\) 391 U.S. 68 (1968).

\(^9\) Id. at 69.


properties watersheds, including the ACLU's controversial *Skokie* case\textsuperscript{13} and the Watergate scandal.

Through his prominent public role as a leading civil liberties advocate, Norman made an indelible, invaluable mark on American law and rights. Even so, this was only the proverbial tip of the iceberg. Norman contributed at least as much, if not more so, through his enormous behind-the-scenes efforts, especially in his capacity as ACLU president, from 1976 until 1991. Having been elected ACLU president at a time when the organization was facing major fiscal and personnel challenges, Norman actually set up an office in the ACLU's headquarters and became actively engaged in its day-to-day operations.\textsuperscript{14} Norman's hands-on involvement had a substantial positive influence not only on the ACLU's national operations, but also on many of the ACLU's state-based affiliates as well, where he personally resolved some of the thorniest personnel and other management controversies.

While never losing sight of the forest—the expansive vision of the ACLU's civil liberties mission that he helped to chart—Norman also always kept his eye on every tree in that forest. Indeed, it often seemed that scarcely a twig could escape his attention. Norman's intellectual brilliance in the courtroom and classroom was matched by what *New York Times* journalist J. Anthony Lukas called his "genius" for resolving organizational challenges peacefully and constructively.\textsuperscript{15}

I especially respect Norman's great contributions to building the ACLU into such an effective institution because they are relatively unknown and, hence, relatively underappreciated. Norman could have continued as a leading litigator or star spokesperson. But rather than pursuing a path that would have brought more personal acclaim—not to mention more personal pleasure—Norman generously focused instead on rebuilding and reinforcing an organization.

This choice reflected his apparent belief that, in the long run, a strong organization could accomplish far more than one outstanding individual, or even a group of such individuals. And that belief has been borne out, thanks in large measure to Norman's efforts. Therefore, Norman's enduring contributions to civil liber-


\textsuperscript{14} WALKER, supra note 3, at 335.

\textsuperscript{15} Id.
ties are enshrined not only in the pages of the U.S. Reports, but also in the ongoing work of the organization that was recently hailed as the best friend the Bill of Rights ever had.16 While I hope the ACLU is the best friend the Bill of Rights ever had, I know the ACLU has never had a better friend than Norman Dorsen.

NADINE STROSSEN*
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President, American Civil Liberties Union


* Professor Strossen succeeded Norman Dorsen as president of the American Civil Liberties Union on February 1, 1991. For assistance with this essay, Prof. Strossen gratefully acknowledges her Academic Assistant, Kathy Davis (NYLS Dec. 02) and her Research Assistant, Daniel Parisi (NYLS 03).