

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,

1. See Nadine Strossen, *A Tribute to Norman Dorsen*, 27 HARV. C.R.-C.L. L. REV. 325 (1992).

2. SAMUEL WALKER, *IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU* (2d ed. S. Ill. Univ. Press 1999) (1990).

3. See *id.* at 33, 253-54, 285, 291, 295, 297, 303, 313, 316, 325, 327, 330, 332-33, 335-36, 338, 369, 373.

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”⁹ children; *Tate v. Short*,¹⁰ 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*,¹¹ 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-

5. See Editorial, *Then/Now, Reflections on the Millennium: The Expanding Reach of Civil Rights*, N.Y. TIMES, Dec. 24, 1999, at A18.

6. *Id.*

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

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

9. *Id.* at 69.

10. 401 U.S. 395 (1971).

11. 402 U.S. 62 (1971).

12. See, e.g., THE RIGHTS OF RACIAL MINORITIES: THE BASIC ACLU GUIDE TO RACIAL MINORITY RIGHTS (Laughlin McDonald et al. eds., 2d ed. 1993).

erties watersheds, including the ACLU's controversial *Skokie* case¹³ 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.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.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-

13. See *Collin v. Smith*, 578 F.2d 1197 (7th Cir.), *cert. denied*, 439 U.S. 916 (1978); *Village of Skokie v. National Socialist Party*, 69 Ill. 2d 605, 373 N.E. 2d 21 (1978); see also ARYEH NEIER, *DEFENDING MY ENEMY: AMERICAN NAZIS, THE SKOKIE CASE, AND THE RISKS OF FREEDOM* (1979).

14. WALKER, *supra* note 3, at 335.

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.

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16. Jack Lessenberry, *Baby Bush and the ACLU*, METRO TIMES DETROIT, Jan. 23, 2001, at <http://www.metrotimes.com>.

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