

**FESTSCHRIFT:
NORMAN WILLIAMS, JR.**

INTRODUCTION

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The articles in this issue of the *Vermont Law Review* are presented as a *festschrift* to Professor Norman Williams, Jr.—a special tribute to a valued friend and colleague by some of this country's best-known scholars and practitioners in the land use field. They write about Norman's work and his influence on their own work, with special emphasis on the tradition of legal realism, that is, the notion that legal doctrine and planning cannot and should not be divorced from the social and economic settings in which they are applied.

The authors include Professor Joan Chalmers Williams (Norman's daughter), a distinguished scholar in her own right, who teaches at American University Law School; Professor John M. Payne of Rutgers University Law School, a particular expert on the *Mt. Laurel* litigation¹ and long-time President of the New Jersey Alliance for Affordable Housing; Professor Daniel R. Mandelker of Washington University Law School, widely recognized for his work in the land use and environmental fields; Dwight Merriam, distinguished land use practitioner and partner in the Hartford, Connecticut law firm of Robinson & Cole; and Professor Richard O. Brooks, director of Vermont Law School's Environmental Law Center for eleven years, and principal organizer of this *festschrift*. Several shorter replies and comments by Professor Norman Williams are also included. Professor Gil Kujovich, of this faculty, has served as faculty editor and coordinator of these essays.

Norman came to Vermont Law School in 1975, at the invitation of then-Dean Thomas M. Debevoise, after a long and illustrious career in public service and teaching. Norman received his Bachelor of Arts degree from Yale University, where he was admitted to Phi Beta Kappa, then pursued graduate studies at Yale and at Cambridge University. He returned to Yale Law School, from which he graduated in 1943, after serving as Editor-in-Chief of the Yale Law Journal. He was admitted to the bar in New York the following year. Norman worked as a zoning analyst for the City of New York from 1948-1950, then served as Director of the Division of Planning and Chief of the Office of Master Planning for

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1. *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975), *cert. denied*, 423 U.S. 808 (1975), *subsequent opinion*, 456 A.2d 390 (1983).

New York's Department of City Planning from 1950 to 1960.

Norman quite properly counts among his most important work his involvement in the landmark *Mount Laurel* litigation in New Jersey in the 1970s.² The controversy over exclusionary zoning practices was highlighted and provoked by Norman's 1955 article, entitled *Planning Law and Democratic Living*, in *Law And Contemporary Problems*.³ His 1971 article in the *Syracuse Law Review*⁴ added fuel to the fire by publicizing data from a state survey of discriminatory housing patterns. Norman then argued the *Mt. Laurel* case before the New Jersey Supreme Court in 1974 and 1975.

Norman taught urban planning at Rutgers University until 1975, when he returned to his home in Vermont and joined the faculty of the Vermont Law School. However, he arranged his schedule to teach at the University of Arizona Law School during the spring semester of each year between 1976 and 1992.

Somehow, Norman has found time to write—and what a body of work he has turned out! He produced the standard reference work in his field, entitled *American Land Planning Law*, in five volumes in 1974-75.⁵ A second edition of that remarkable work, now spanning eight volumes, was published between 1985 and 1988.⁶ He is also the author, with Frank Gilbert and our late colleague Ed Kellogg, of *Readings in Historic Preservation*, published in 1983,⁷ and the author, with Ed Kellogg and Peter Lavigne, of the lovely book entitled *Vermont Townscapes*, which was published in 1987.⁸ Meanwhile, Norman has, over a period of many years stretching back to the 1940s, produced a torrent of articles, briefs, and teaching materials about planning and zoning.⁹

2. *Id.*

3. Norman Williams, Jr., *Planning Law and Democratic Living*, 20 LAW & CONTEMP. PROBS. 317 (1955).

4. Norman Williams, Jr., *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475 (1971) and 4 LAND USE CONTROLS ANNUAL 1 (1970).

5. NORMAN WILLIAMS, JR., *AMERICAN LAND PLANNING LAW* (1974 & Supp. 1988).

6. *Id.*

7. NORMAN WILLIAMS, JR., ET AL., *READINGS IN HISTORIC PRESERVATION: WHY? WHAT? HOW?* (1983).

8. NORMAN WILLIAMS, JR., ET AL., *VERMONT TOWNSCAPES* (1987).

9. Partial List of Published Writings by Norman Williams, Jr.: *How to Get Around the Requirement for Compensation in Cases of Invalid Zoning—The Washington Solution*, 17 ZONING & PLAN. L. REP. 33 (May 1994); *Where Are South Carolina and the Supreme Court Taking Us?*, 16 VT. L. REV. 1111 (1992) (with R. Jeffrey Lyman); *Scenic Protection as a Legitimate Goal of Public Regulation*, 38 J. URB. & CONTEMP. L. 3 (1990); *The Aesthetic Criterion in Vermont's Environmental Law*, 3 HOFSTRA PROP. L.J. 89 (1990) (with Tamara Van Ryn-Lincoln); *Planning Law in the 1990s*, 31 ARIZ. L. REV. 471 (1989); *And Now We Are Here on a Darkling Plain*, 13 VT. L. REV. 635 (1989)

His teaching at Vermont Law School is legendary. For years, students have flocked to his classes to hear it directly from the lips of the master. This despite Norman's well-known distaste for editing teaching

(with Holly Ernst); *And Now We Have Four Systems*, 12 VT. L. REV. 1 (1987); *The White River Junction Manifesto*, 9 VT. L. REV. 193 (1985) (with Richard F. Babcock, Daniel R. Mandelker, Charles Siemon, and R. Marlin Smith); *The Background and Significance of Mount Laurel II*, 26 J. URB. & CONTEMP. L. 3 (1984); *A Look at Implementation*, 14 ENVTL. L. REP. 833 (1984); *The Oregon Example: A Prospect for the Nation*, 14 ENVTL. L. REV. 843 (1984); *Transfer of Development Rights—What Are the Prerequisites for Success*, in REFLECTIONS ON SPACE (M.I.T. pub. 1984); *Planning Law in the 1980s: What Do We Know About It?*, 7 VT. L. REV. 205 (1983) reprinted in CLARK BOARDMAN, ZONING AND PLANNING LAW HANDBOOK 465 (1984); *Address, The Background of Historic Preservation Law*, 1 PACE L. REV. 619 (1981); *Summary of Planning and Law Division Conference, Tucson, Arizona*, 5 NEWSL. PLAN. & L. DIV., AMER. PLAN. ASS'N no. 3, 2-6 (1981); *A Highly Structured System—But So Complex*, 4 NEWSL. PLAN. & L. DIV., AMER. PLAN. ASS'N no. 4, 1-6 (1980); *On From Mount Laurel: Guidelines on the "Regional General Welfare,"* 1 VT. L. REV. 23 (1976); *Studies in Legal Realism: Mount Laurel, Belle Terre and Berman*, 29 RUTGERS L. REV. 73 (1975) (with Tatyana Doughty & R. William Potter); *Cluster Zoning: A Realistic Reappraisal*, 1 REAL EST. L.J. 245 (1973); *Research Opportunities in Planning Law*, 1 LAND USE CONTROLS ANN. 101 (1972); *The Strategy on Exclusionary Zoning: Towards What Rationale and What Remedy?*, 2 LAND USE CONTROLS ANN. 177 (1972) (with Tatyana Doughty & R. William Potter); *The Three Systems of Land Use Control (Or, Exclusionary Zoning and Revision of the Enabling Legislation)*, 25 RUTGERS L. REV. 80 (1971); *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475 (1975) and 4 LAND USE CONTROLS ANN. 1 (1970); *Segregation of Residential Areas Along Economic Lines: Lionshead Lake Revisited*, 1969 WIS. L. REV. 827 (1969) (with Edward Wacks); *Legal Techniques to Protect and to Promote Aesthetics Along Transportation Corridors*, 17 BUFF. L. REV. 701 (1968); *Development Controls and Planning Controls: The View From 1964*, 19 RUTGERS L. REV. 84 (1964); *Planning Law and the Supreme Court*, 13 ZONING DIG. 47 (1961); *Annual Judicial Review*: 34 AIP J. 180 (1968), 33 AIP J. 184 (1967), 32 AIP J. 163 (1966), 31 AIP J. 252 (1965), 30 AIP J. 240 (1964), 29 AIP J. 127 (1963), 28 AIP J. 132 (1962), 27 AIP J. 159 (1961); *The Evolution of Zoning*, 15 AM. J. ECON. & SOC. 253 (1956); *Planning Law and Democratic Living*, 20 L. & CONTEMP. PROBS. 317 (1955); *Zoning and Housing Policies Must be Integrated If We Hope to Achieve Housing Goals*, 10 J. HOUSING 94 (1953); *Implications of the Franklin Institute Study for Planning and Zoning*, 18 AIP J. 181 (1952); *Where Our Zoning Stands Today*, 5 TRAFFIC Q. 252 (1951), reprinted in THE MAINE TOWNSMAN, Sept. 1951, at 4; *Discrimination in Minority Housing*, 9 AM. J. ECON. & SOC. 84 (1949); *Planning & Zoning Notes*, THE AMERICAN CITY MAGAZINE, (monthly column 1947-1976); 52 YALE L.J. 1 (1942) (Editor in Chief of that issue); Comment, *Legal Techniques for Protecting Free Discussion in Wartime*, 51 YALE L.J. 798 (1942); Note, *Rights of Working Men Against Union Officials During Collective Bargaining Negotiations*, 51 YALE L.J. 331 (1941); SCENIC PRESERVATION - MATERIALS (unpublished, 1991); HISTORIC PRESERVATION - LEGAL MATERIALS (unpublished, 1990) (with Edmund H. Kellogg); *Interim Report, Design Issues Study Committee*, VERMONT AGENCY OF NATURAL RESOURCES, (Summer 1990) (with numerous co-authors); Brief *Amicus Curiae* for the American Planning Association, *Britton v. Town of Chester*, No. 89-372 (N.H. decided July 24, 1991) (decided in our favor) (with numerous co-authors); VERMONT TOWNSCAPES (1987) (with Edmund H. Kellogg and Peter Lavigne); READINGS IN HISTORIC PRESERVATION: WHY? WHAT? HOW? (1983) (with Edmund H. Kellogg and Frank B. Gilbert); LAND USE PLANNING AFTER EARTHQUAKES (1980) (with W.E. Spangle et al.); AMERICAN LAND PLANNING LAW (1974 & Supp. 1988); *Anti-Exclusionary Litigation—In What States?*, in NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, EXCLUSIONARY LAND USE LITIGATION, POLICY AND STRATEGY FOR THE FUTURE (1975); FRONTIERS OF PLANNED UNIT DEVELOPMENT: A SYNTHESIS OF EXPERT OPINIONS (Burchell ed., 1973); *Land Use and Zoning*, in AN APPROACH TO URBAN PLANNING (Breese & Whiteman eds., 1953).

materials and his crushing reading assignments. His great brilliance, his sense of humor, and his unflagging enthusiasm for his subject have endeared him to thousands of Vermont Law School graduates.

Norman Williams is also a wonderful friend and colleague. He provides support and encouragement for the scholarship of other Vermont Law School faculty. He provokes us to think about our work here together in new ways. He holds us—as he always holds himself—to the very highest standards of excellence. And he does this with unflinching patience and good humor.

The articles in this collection may appear to have two parallel themes—Norman Williams and legal realism. In fact, the two themes are inseparable. Norman's work in law and planning—indeed, his approach to every aspect of his professional life—is bound up with his commitment to make law relevant to the society, and to make only law that is relevant. In the best tradition of Karl Llewelyn and Jerome Frank, he has always betrayed a deep skepticism about the kind of formulaic law that ignores the setting in which it is applied. Law, furthermore, is servant, not master, and must not be used to hurt the very people it is supposed to help.

Norman spelled this out in a 1955 article:

Constitutional law should serve to shed light upon thinking about local planning, by requiring those concerned to do what they should be doing anyway—to work out the relationship between planning the future environment and the great issues connected with human freedom and opportunity.¹⁰

He went on to deride claims that zoning should protect property values by barring the movement of Blacks into white residential neighborhoods, and to decry efforts to protect the “character of a neighborhood” by avoiding what he calls “psychological nuisances.”¹¹ Norman warned that land use laws were being used to create deepening racial, ethnic, and economic divisions within our society:

10. Norman Williams, Jr., *Planning Law and Democratic Living*, 20 *LAW & CONTEMP. PROBS.* 317, 318 (1955).

11. *Id.* at 334.

Even if prejudice were regarded as every individual's own business, discrimination—i.e., prejudice translated into action—has such devastating effects upon large segments of the population that it is clearly everybody's business. What is particularly serious is that in this area the machinery of democratic government is itself often used for anti-democratic ends—and that courts, constitutional lawyers, and the leaders of democratic thought and action remain unconcerned.¹²

Twenty years later, Norman was able to write, with justifiable pride, of the *Mt. Laurel* case,¹³ that the New Jersey Supreme Court “has led the nation in a major turnaround on a major current problem and has documented its approach by constant references to the real world.”¹⁴

Fifteen years after that, writing about the Supreme Court's decision in the *First English* case,¹⁵ Norman seemed less optimistic but no less determined. Quoting from Justice Holmes' dissent in *Lochner*,¹⁶ Norman noted that “general propositions do not decide concrete cases.”¹⁷ The Justices had ignored a rich state court jurisprudence in this area, he said, and “gone off on their on, inventing a series of abstract formulae The Supreme Court is far removed from the problems underlying such litigation in the real world. As so often, Holmes put it exactly right: ‘The life of the law has been not logic, it has been experience.’”¹⁸

Norman concluded his 1989 *Vermont Law Review* article with this passage from Matthew Arnold's *Dover Beach*:

And we are here as on a darkling plain
Swept with confused alarms of struggle and flight,
Where ignorant armies clash by night.¹⁹

Yet Norman has never hesitated to join the battle, and by his example he has encouraged countless others to fight on. For that example, and for all his efforts, we are deeply grateful.

12. *Id.* at 349.

13. *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975), *cert. denied*, 423 U.S. 808 (1975), *subsequent opinion*, 456 A.2d 390 (1983).

14. Norman Williams, Jr. & Tatyana Doughty, *Studies in Legal Realism: Mount Laurel, Belle Terre, and Berman*, 29 *RUTGERS L. REV.* 73, 109 (1975).

15. *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987).

16. *Lochner v. New York*, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting).

17. Norman Williams & Holly Ernst, *And Now We Are Here On A Darkling Plain*, 13 *VT. L. REV.* 635, 664 (1989).

18. *Id.* at 665-66 (citing O.W. HOLMES, JR., *THE COMMON LAW* I (1881)).

19. *Id.* at 673.

