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Dedication to Professor Nora Jane Lauerman - In Memoriam

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DEDICATION TO PROFESSOR NORA JANE LAUERMAN

IN MEMORIAM

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Professor Nora Jane Lauerman began her academic career at the University of North Carolina, where as an undergraduate she experienced the civil rights and protest movements of the late 1960s and graduated with a B.A. in 1970. She attended Georgetown Law Center. Her father, Henry Lauerman, a law professor at Wake Forest after naval service, had graduated from Georgetown in 1948. While there, Nora was student Editor in Chief of the American Criminal Law Review and published a note on the "Allen charge" dilemma.[1] She received her J.D. in 1973, having the goal to teach law, following in her father's footsteps. She served as law clerk for Judge Earl Vaughn of the North Carolina Court of Appeals in 1973-74, during which year she sought a teaching position. When the University of Cincinnati College of Law interviewed her and then extended an offer in 1974, she accepted. She remained a faculty member the entire twenty-six years of her teaching career, until her untimely death on July 8, 2000. In addition to her publications, she leaves a strong following of devoted students especially influenced by the systemic approaches she worked out in her juvenile and family law materials and through her demanding teaching style.

Professor Lauerman was one of the first members of the faculty I saw on taking office as Dean of the University of Cincinnati College of law in 1979. She was then associate professor and acting associate dean, serving during a year of transition in administrations. She was entering her sixth year of teaching at the College of Law and recently had published two articles, one on child custody involving non-marital sexual conduct[2] and the other on breach of warranties in sales of oral contraceptives.[3] She also just completed a revision of her comprehensive course materials on juvenile law.[4]

"Are you tenured?" I asked, wondering why anyone would take on the job as an acting associate dean without it. "Not yet!" she replied. "The acting dean asked me to help out during the dean search this

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1. *See* Note, *The* Allen *Charge Dilemma*, 10 AM. CRIM. L. REV. 637 (1972).
2. *See* Nora J. Lauerman, *Nonmarital Sexual Conduct and Child Custody*, 46 U. CIN. L. REV. 647 (1977).
3. *See* Nora J. Lauerman, *Oral Contraceptives and Breach of Warranty Under the Uniform Commercial Code*, 27 DEF. L.J. 189 (1978).
4. *See* NORA J. LAUERMAN, CASES AND MATERIALS ON JUVENILE LAW (rev. ed. 1979).

year." Would she stay on the job, I asked, until I could find a permanent associate dean. She agreed. The year turned out to be very disruptive, for we were entering a three-year construction project just underway to reconstruct the old building, tripling the space by new construction which would completely envelop it. I was happy to have someone who knew the students and faculty to keep things on track, which she did. We rented office space for faculty and staff across the street in Deaconess Hospital, and Professor Lauerman and most of the faculty had their temporary offices there, which happened to be next to the psychiatric ward. The elevators were large enough to handle a bed or a stretcher. More than once, some faculty member complained of riding down alongside a corpse on the way to autopsy.

Nora and I met regularly throughout the first year in temporary space we maintained for the dean's office in a seminar room in the old building being remodeled. We worked mostly on student-faculty relations. Without her knowledge and sure decision-making, life amidst construction would have been much worse than it was during that time. We held classes in the old building as it was being torn apart for transformation into the splendid facilities we now occupy two decades later. We looked forward to these better conditions and found humor where we could to relieve frustration. Once someone from another faculty asked where the faculty was. "Across the street, in the hospital," I replied, winking at Nora, who found the circumstances amusing.

"My congratulations!" he shot back, attempting morbid academic humor.

"You misunderstand," I answered, playing it straight. "Only their offices are there."

"Oh," came a quick retort, "then, my condolences!"

Nora maintained good student relations for us, putting up with student complaints about colonies of rats that had been displaced by the construction, noise from jack-hammers, dust and poor facilities. Sometimes one or two lost rats could be spotted waddling against a wall as they scurried through the construction. Once we had to catch a bat trapped inside an old part of the building. Nora helped maintain a sense of order and spirit, maintaining tough standards, and calming down the students during that first year, when the classrooms barely were adequate for lectures and discussion.

A few months into the construction project, during annual reviews of faculty to be considered for promotion or tenure or both, I scheduled a meeting with Professor Lauerman to discuss her law teaching career. There were two faculty members eligible for consideration for both promotion and tenure, and Nora was one of them. I prepared by reading all her writings and recent student evaluations and began the

review by asking, "What courses have you offered over the last five years?" She answered, "I've had ten preparations."

"Ten?" I asked, incredulously. "You were assigned ten new courses? Ten new preparations? You had to prepare and teach all these from scratch over just five years?"

"Yes," she said, "they needed them taught, and I like to teach. It was a bit much, but new professors are expected to teach a lot." I had been a law dean before and knew that this was unusual. There must have been extraordinary circumstances for such a load to be piled on a new faculty member. The usual practice is to give new professors light loads for the first year so that they might have time to learn how to teach well while tackling first research projects. "How did you find time for your scholarship?" I inquired further. "I worked hard," was her response.

Of all the courses she had offered, I asked next, which two courses and two seminars did she like to teach most? Which did she want to keep and develop? She did not hesitate in identifying family law and juvenile law as her courses of choice and employment discrimination and civil rights as her seminars. She had taught them all and had written in the family law area. We made them her regular teaching assignments, when she returned to a full-time teaching load the next year. We agreed to review her preferences every year, but I thought she should stick with these four to give more time for her research and writing. I agreed to support her application for promotion and tenure. She stayed with these courses and published in the subject-matter,[5] and in time her scholarship was highly respected, cited as authoritative or persuasive in important studies, major law reviews, and court decisions.[6]

We forget, perhaps we never knew, how much of a pioneer Professor Lauerman actually was in this law school. In the late 1970s, Nora was the only full-time woman member on a small faculty; but she was the second (not the first) woman appointed to a full-time professorship in this old-line law school.[7] The tenured faculty voted in favor of her

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5. *See* Nora J. Lauerman, *A Step Toward Enhancing Equality, Choice and Opportunity to Develop in Marriage and at Divorce*, 56 U. CIN. L. REV. 493 (1987); Nora J. Lauerman, Book Review, 2 BERKELEY WOMEN'S L.J. 246 (1986) (reviewing LENORE J. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA (1985)); Nora J. Lauerman, Book Review, 5 HUM. RTS. Q. 223 (1983) (reviewing WALTER SURMA TARNOPOLSKY, DISCRIMINATION AND THE LAW IN CANADA (1982)); NORA J. LAUERMAN, CASES AND MATERIALS ON JUVENILE LAW (rev. ed. 1990) (reproduced).

6. *See infra* notes 10-14, 16-22.

7. Natalie Loder Clark, now professor of law at Northern Illinois University Law School, was assistant professor of law at Cincinnati from 1973 to 1975. I believe she was the first and Nora Lauerman the second woman appointed to the faculty of law at the University of Cincinnati. The Cincinnati Law School, established in 1833, was the first law school in the country to have as many as three professors (all male). Its principal founder, Timothy Walker, was a student of Justice Joseph Story at Harvard and moved

application for promotion and tenure with my approval, and in 1980 she became the first tenured woman member of the faculty in the history of the College of Law, with the rank of full professor. We take for granted now that women and minorities in significant numbers are important permanent members of law faculties.[8] In the early 1970s, however, there remained much skepticism, if not outright resistance, to the appointment of women and minorities, especially in the old-line law schools whose senior faculties were appointed right after World War II ended when most women returned to domestic tasks of rearing families and the civil rights revolution had not yet taken hold. All this began to change in the late 1950s and 1960s, gathering momentum in the 1970s. Nora came to the faculty amidst this changing world and persisted to the end of her life. She showed the way for others formerly excluded by gender, race or belief and sacrificed much that these others might have better opportunity to enter and succeed in the law teaching profession in this city.

Nora insisted on teaching early morning classes. She wanted to climb into her jeep after class or on weekends and drive to her farm in Ripley. She said she could think better there. As her scholarship became recognized, it influenced other scholarship and judicial decisions. Two of her most influential works appeared in the University of Cincinnati Law Review. The earliest, and one of her finest pieces, was the 1977 article, *Nonmarital Sexual Conduct and Child Custody*.[9] In it, she summarized trends in case law during the 1970s to demonstrate various approaches in deciding child custody cases involving extra-marital sexual conduct of a parent who demanded custody. She argued that the soundest approach was the one which required a court determination from the evidence of a clear "direct adverse impact" of harm to the child as a result of parental sexual misconduct before denying custody to such parent. Implicit or explicit presumptions about morally bad conduct would not suffice, in her view. Nor should it matter if the nonmarital parental misconduct were heterosexual or homosexual behavior, since the required finding would demand the same evaluation in either type

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West for opportunity in law in the booming frontier Cincinnati, "Queen City of the West." He became one of the great ante-bellum lawyer-leaders of the community. He published lectures, articles, an influential treatise, *Introduction to American Law* (1837), and advocated law reforms before their time, including the right of women to own property and to vote, abolition of capital punishment, an end to slavery, and law reform to codify much law and procedure. Not until the last half of the twentieth century, however, well after the woman's franchise, did such old-line law schools begin to employ women or African-Americans as faculty members.

8. This year, Cincinnati's full-time law faculty of twenty-three members includes seven women and five minorities.

9. *See supra* note 2.

of sexual behavior. This study was cited in major articles which appeared in the University of Pittsburgh Law Review,[10] William and Mary Bill of Rights Journal,[11] and the University of Louisville Journal of Family Law.[12] Lauerman's article was influential in court decisions, too, cited by state courts in Ohio[13] and New York.[14]

Also influential is her second article, the work Professor Lauerman presented to a symposium in 1987 in the University of Cincinnati Law Review, which discusses uses of premarital agreements and other voluntary choices as ways to minimize some of the inequitable results of no-fault divorce.[15] This article is cited by major articles appearing in the University of North Carolina Law Review,[16] Georgetown Law Journal,[17] Louisiana Law Review,[18] University of Miami Law Review,[19] Wisconsin Law Review,[20] and California Law Review.[21] This work, in addition, is

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10. *See* Jane C. Murphy, *Rules, Responsibility and Commitment to Children: The New Language of Morality in Family Law*, 60 U. PITT. L. REV. 1111, 1187 n.454 (1999) (favoring Lauerman's view of a standard that makes "an honest attempt to evaluate what would be in the best interest of the child rather than on the basis of subjective reaction to parental moral values").

11. *See* Joseph R. Price, Bottoms III: *Visitation Restrictions and Sexual Orientation*, 5 WM. & MARY BILL OF RTS. J. 643, 652 n.57 (1997) ("direct adverse impact" approach applied in Ohio and other jurisdictions for inappropriate conduct by a heterosexual parent is also applied to homosexual parent claiming child custody or visitation).

12. *See* Peter Nash Swisher & Nancy Douglas Cook, Bottoms v. Bottoms: *In Whose Best Interest? Analysis of a Lesbian Mother Child Custody Dispute*, 34 U. OF LOUISVILLE J. OF FAM. L. 843, 847 n.16 (1995).

13. *See In re* Adoption of Charles B., 552 N.E.2d 884, 888 n.1 (Ohio 1990) (citing Lauerman's "direct adverse impact" test to support reversal of Court of Appeals' holding that homosexuals are barred as a matter of law from adopting children or changing custody when custodial mother was engaged in non-marital homosexual conduct); Rowe v. Franklin, 663 N.E.2d 955, 957 (Ohio Ct. App. 1995) (using Lauerman's "direct adverse impact" test and following her persuasive reasons for rejecting other approaches tending to punish mother for non-marital sexual activity, when mother is seeking custody of child).

14. *See* Linda R. v. Richard E., 561 N.Y.S.2d 29, 32 n.1 (N.Y. App. Div. 1990) (nonmarital sexual conduct of each parent is evaluated similarly in relation to their children, and in custody dispute, sexual behavior of one parent is relevant only if the child is adversely affected, citing Lauerman).

15. *See* Nora J. Lauerman, *A Step Toward Enhancing Equality, Choice and Opportunity to Develop in Marriage and at Divorce*, 56 U. CIN. L. REV. 493 (1987).

16. *See* Sally Burnett Sharp, *Step by Step: The Development of the Distributive Consequences of Divorce in North Carolina*, 76 N.C. L. REV. 2017, 2052 n.182 (1998) ("suggesting that by authorizing rehabilitative alimony, the law recognizes that women are capable of financial independence").

17. *See* Twila L. Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 GEO. L.J. 2481, 2498 n.66 (1994) (options for woman's choice for new life).

18. *See* Kenneth Rigby & Katherine Shaw Spaht, *Louisiana's New Divorce Legislation: Background and Commentary*, 54 LA. L. REV. 19, 26-27 n.17 (1993).

19. *See* Mary Elizabeth Borja, Comment, *Functions of Womanhood: The Doctrine of Necessaries in Florida*, 47 U. MIAMI L. REV. 397, 417 n.130 (1992).

20. *See* Jana B. Singer, *The Privatization of Family Law*, 1992 WIS. L. REV. 1443, 1475 n.144 (challenging thesis that private attempts to predetermine economic outcome of divorce are against public policy, since state imposed duty of support is an essential incident of marriage and not proper subject for private contract).

21. *See* J. Thomas Oldham, *Putting Asunder in the 1990s*, 80 CAL. L. REV. 1091, 1126 n.157 (1992) (reviewing DIVORCE REFORM AT THE CROSSROADS (Stephen D. Sugarman & Herma Hill Kay eds., 1990))

cited favorably by the Iowa Supreme Court for the proposition that transitional alimony aims at enabling a newly divorced person to secure career counseling, educational training and the like with a view toward becoming self-sufficient.[22]

Nora Lauerman believed deeply in her subjects. She lived by the principles she taught. Seldom would she enter the prolonged faculty debates about policy or curriculum matters, unless it was important. Should a matter of unfair discrimination in the treatment of students or colleagues appear on the faculty's agenda, she might appear in particularly worthy cases, as well, thoroughly grounded with facts and argument in support of the person she considered wronged. She had little patience for students who offered lame excuses for lackluster performance, but was generous in her time for serious students who worked hard. One thing I observed year after year was her resolute insistence on honesty and integrity both from her students and from others. Rarely was she persuaded to vote to readmit a student on academic probation or give much credence to an argument in a petition for a grade change on the basis of hardship, unfairness or discrimination, in view of the College's honor system and blind grading policy, unless the evidence were clear and compelling. Yet, Professor Lauerman served for many years on the Admissions Committee, reading student applications[23] with an eye alert to a special circumstance or sparkle that would add promise to test scores and indicate future potential of applicants from diverse backgrounds, if admitted.

In later years, after leaving the deanship, I was away from the College of Law as visiting professor at other law schools or on other leave, and I lost track of Nora's scholarly work and contributions. Though she was fiercely private, her colleagues might hear occasional expressions of concern about her health from students. We respected her privacy and choices then and still do. The loss we share runs deeper now, especially after reflecting on her entire career at the University of Cincinnati College of Law over this past quarter century. Who can fully understand or appreciate how much she gave to her students and how greatly she contributed to the law school and to the development of law in her chosen subjects?

(unrealistic to suggest that a divorcing housewife should not be "forced . . . to play multiple roles against her will after the marriage ends").

22. *See In re* Marriage of Smith, 573 N.W.2d 924, 927 n.1 (Iowa 1998).

23. By conscious policy the faculty asks each member of the faculty Admissions Committee, which includes two students with one vote between them, to read every application and record a position on accepting, rejecting, or deferring. Professor Lauerman could be seen, before her morning classes or after teaching them, in the faculty library conscientiously going over admissions folders.