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## THE LEGACY OF NORM MALENG

Judge Robert S. Lasnik\* & David Boerner†

At the 1940 Annual Conference of United States Attorneys, Attorney General Robert H. Jackson defined the qualities of a good prosecutor:

A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.<sup>1</sup>

When Attorney General Jackson spoke these words, Norm Maleng was one year old, living with his Norwegian immigrant parents on a small dairy farm near Acme, Washington. Despite his humble roots, that boy would grow up to become a man who epitomized those qualities as few prosecutors ever have. The story of how Norm Maleng built a prosecutorial career embodying those traits is what brings us together.

After becoming editor-in-chief of the *Washington Law Review*, Norm graduated at the top of his class from the University of Washington School of Law, and he accepted an offer from Senator Warren Magnuson to join the staff of the Senate Commerce Committee. The senator had a policy of offering a position to each year's top law student. Norm was "Maggie's" first Republican; he joined a staff of Democrats who were activists in the consumer reforms of the day. While Norm's fundamental Republican principles never wavered while working with this team of Democrats, he took great pride in his work on amendments to the Flammable Fabrics Act to expand its coverage to children's

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1. Editor's note: Robert H. Jackson, *The Federal Prosecutor*, 24 J. AM. JUDICATURE SOC'Y 18, 20 (1940), available at <http://www.roberthjackson.org/Man/theman2-7-6-1/>, permanent copy available at <http://www.law.washington.edu/wlr/notes/84washlrev3n1.pdf>.

sleepwear.<sup>2</sup> Norm watched President Lyndon Johnson sign those amendments into law in 1967, and the experience was a harbinger of the way Norm would approach issues in the future. His concern for those who could not protect themselves led this committed Republican to work shoulder to shoulder with Democrats toward a pragmatic solution that all could support. It was a pattern he would follow throughout his public life.

Returning to Washington state the next year, he joined the prestigious firm of Preston, Thorgrimson, Starin, Ellis & Holman. The lure of public service, however, was strong, and when the reformer Chris Bayley was elected King County Prosecuting Attorney in 1970, Norm became his Chief Civil Deputy. At the time Norm took the position, the Civil Division was in shambles.<sup>3</sup> The deputies from the former administration had resigned, and many pending matters were unattended. Norm rose to the challenge and led a team of young, idealistic, non-partisan lawyers in building a superb public law office. Norm's success resulted from the combination of a brilliant legal mind and a deep insight into the issues that the Civil Division faced. He developed strong relationships with King County officials and saw it as his role to reduce the inevitable conflicts that occurred within government.

Norm recognized, however, that a public attorney's role was more than providing sound legal advice and advocacy. He became a wise counselor to King County's officials and worked quietly and effectively to bring a voice of reason to the inevitable conflicts that arose in the County's complex local government.

As Norm's reputation grew, elected officials and government leaders sought his wise counsel. Always aware that the elected officials were the policymakers, Norm worked tirelessly to ensure that their decisions were fully informed and made after a careful weighing of the public interest. He approached issues in a non-judgmental way, understanding the

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2. Editor's note: See Act of Dec. 14, 1967, Pub. L. No. 90-189, 81 Stat. 568 (codified as amended at 15 U.S.C. §§ 1191-1204 (2008)).

3. Editor's note: For more information about the problems with corruption in the King County Prosecutor's Office, including the exposure of a police-payoff system in the 1960s and Bayley's later indictment of his predecessor Charles Carroll, see David Wilma, *Carroll, Charles Oliver "Chuck" (1906-2003)*, HISTORY LINK, July 8, 2003, [http://www.historylink.org/index.cfm?DisplayPage=output.cfm&File\\_Id=4216](http://www.historylink.org/index.cfm?DisplayPage=output.cfm&File_Id=4216), permanent copy available at <http://www.law.washington.edu/wlr/notes/84washrev3n3.pdf>. See also Lou Corsaletti & Dee Norton, *Tolerance-Policy Conspiracy Charged*, SEATTLE TIMES, July 28, 1971, at A10; Richard W. Larsen, *Indictments Come on Bayley 'Anniversary'*, SEATTLE TIMES, July 28, 1971, at A11; John Wilson & Marshall Wilson, *Times' Series 4½ Years Ago on Payoffs Here . . . Began Chain of Events Leading to Indictments*, SEATTLE TIMES, July 28, 1971, at B2, B3 & B6.

competing positions and crafting solutions that replaced rancor with harmony. Again and again county officials facing difficult problems would say, “Let’s see what Norm thinks.”

Prosecuting Attorney Chris Bayley’s management style was inclusive. He brought together the chiefs of the three divisions to collectively develop office policies on all the important issues, a process that exposed Norm to issues in both the adult and juvenile criminal-justice systems. Early in his career as a prosecutor, Norm tried a major case arising from the grand-jury investigation into the policy of gambling tolerance that corrupted the Seattle Police Department. His insightful analysis and advice helped shape the many reform policies that were successfully implemented by Prosecutor Bayley.

After eight years as the elected prosecutor, Chris Bayley decided to return to the private sector. Norm was the consensus choice to assume leadership of what had become a superb prosecutor’s office, and he was elected in 1978.<sup>4</sup>

Criminal justice issues became King County Prosecutor Norm Maleng’s direct responsibility, and he set out with his characteristic open and inclusive style to continue the reform efforts he had supported during the prior eight years. In retrospect, the number and variety of innovations he established are inspiring. At the time, it was simply Norm at work. He approached every challenge with unfailing optimism and the belief that talented people working together with the goal of doing the right thing could improve even the most difficult situation.

His commitment to the victims of violence was always at the center of his efforts. He created Washington’s first Special Assault Unit, where he assigned experienced and committed deputies to work full time prosecuting individuals who victimized women and children. The Unit became a national leader in developing innovative techniques to make the criminal-justice system more humane and less terrifying to vulnerable victims.<sup>5</sup>

Norm naturally embraced the concept of victims’ rights. He applied

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4. Editor’s note: See Jack Broom, *Maleng Wins; Changes To Be Studied*, SEATTLE TIMES, Nov. 8, 1978, at B7; Charles Dunsire, *Maleng Trims Bates in Race for City Prosecuting Attorney*, SEATTLE POST-INTELLIGENCER, Nov. 8, 1978, at A4.

5. Editor’s note: Today, prosecutors at King County’s Special Assault Unit are specially trained to deal with cases involving the sexual abuse of children and adults, and the physical abuse of children. Highly skilled forensic interviewers assist prosecutors and law enforcement in obtaining accurate interviews in these situations. See generally King County Prosecutor’s Office, Criminal Division, <http://www.kingcounty.gov/prosecutor/criminaloverview.aspx#special> (last visited Feb. 4, 2009), permanent copy available at <http://www.law.washington.edu/wlr/notes/84washlrev3n5.pdf>.

the techniques developed in the Special Assault Unit to all crimes; prosecutors informed and consulted victims as their cases moved through the courts.

Making the criminal-justice system work better was an ongoing process, and Norm always had an open mind to ways to make significant improvements in the state. He led efforts in the late 1980s to reform Washington's drug laws and toughen penalties for sex offenders. His mission was always to compassionately and effectively respond to the devastating impact that crime has on victims and the community.

At the state level, Norm championed a series of systemic reforms beginning with the Sentencing Reform Act.<sup>6</sup> The Sentencing Reform Act of 1981 was the most comprehensive sentencing-reform measure enacted in the United States in the past half-century.<sup>7</sup> The Act reflected Norm's signature approach to making profound change. While the reform was fundamental, it was not radical. It rejected the practices of the past and constructed a new sentencing structure based on clearly articulated purposes: guiding and structuring—but not eliminating—necessary discretion, and assuring citizens that all decision-makers would be accountable to the public. As Norm put it, the Act was “tough and fair.”<sup>8</sup>

As King County Prosecutor, Norm continued his role as counselor and advisor to the leaders of King County. Norm's wise counsel and sure hand greatly facilitated the complex merger of the Municipality of Metropolitan Seattle (METRO) into King County. As they had when he

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6. Editor's note: *See* WASH. REV. CODE §§ 9.94A.010–94A.460 (2008). The Sentencing Reform Act of 1981 (SRA) was aimed at establishing a comprehensive sentencing system for adult felonies in Washington state. To that end, the SRA created the Sentencing Guidelines Commission and charged it with developing a system for courts to follow that would give offenders who had committed similar crimes equivalent sentences. In 1982, the Sentencing Guidelines Commission recommended a sentencing “grid” to the State Legislature that gave sentencing ranges for particular crimes based on the seriousness of the offense and the offender's criminal history. Adopted in 1983, this “grid” was codified in Title 9.94A of the Revised Code of Washington. Although the Sentencing Reform Act has been subject to frequent amendment by the Legislature, the basic structure of the original sentencing scheme endures. Prior to the implementation of the SRA, sentencing for adult felonies was left to the courts' discretion. For the historical background of the Sentencing Reform Act of 1981, see the Washington State Sentencing Guidelines Commission, *Sentencing Reform Act: Historical Background*, <http://www.sgc.wa.gov/Informational/historical.htm> (last visited Feb. 28, 2009), *permanent copy available at* <http://www.law.washington.edu/wlr/notes/84washrev3n6.pdf>.

7. Editor's note: *See generally* DAVID BOERNER, *SENTENCING IN WASHINGTON: A LEGAL ANALYSIS OF THE SENTENCING REFORM ACT OF 1981* (1985).

8. Editor's note: Patrick McRoberts, Norm Maleng, 1939–2007, [http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file\\_id=8180](http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file_id=8180) (last visited Feb. 6, 2009), *permanent copy available at* <http://www.law.washington.edu/wlr/notes/84washrev3n8.pdf>.

headed the Civil Division, political leaders from all parties and perspectives sought Norm's advice and skill in bringing consensus solutions to difficult problems. Although he was the lawyer for county government and its elected officials, Norm never lost sight of the fact that he and his deputies represented the people of King County. If elected officials violated that trust, they could not expect the King County Prosecutor to cover up or defend that dereliction of duty. Norm Maleng's client was always the people of his community.

Tragedy struck the Maleng family in 1989. Norm and his wife Judy's daughter Karen died at age twelve in a sledding accident on a snowy hill near their home. Norm described it as the worst moment of his life. Karen's death influenced him for the rest of his life. His pain deepened the empathy and compassion that had already motivated him throughout his public career. He began a practice of meeting with the families of homicide victims to share their anguish and assure them that he knew what it was like to lose a loved one.

That May a vicious sexual assault on a young boy by a recidivist sex offender shocked the state and led to cries for changes in the justice system.<sup>9</sup> Governor Booth Gardner, a Democrat, reached out to Norm and asked Norm to lead a Community Protection Task Force that would craft a response to the inadequacies of a system that had contributed to the tragedy.<sup>10</sup> Characteristically, Norm led a comprehensive investigation into why the state had been powerless to protect its citizens. The package of new laws that resulted from this investigation included the nation's first authorization for civil commitment of sexually violent predators<sup>11</sup> and first comprehensive program of registration and community notification for sex offenders.<sup>12</sup> Both became models for the nation and are now found in the majority of states and the federal government.<sup>13</sup>

As far-reaching as the reforms were, perhaps for Norm the most

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9. Editor's note: *See generally* David Boerner, *Confronting Violence: In the Act and in the Word*, 15 U. PUGET SOUND L. REV. 525 (1992) (providing a detailed background to the enactment of Washington's sexual-predator sentencing and civil-commitment laws).

10. Editor's note: Exec. Order No. 89-04, 89-13 Wash. Reg. 64 (July 5, 1989) (establishing the Governor's Task Force on Community Protection).

11. Editor's note: 1990 Wash. Sess. Laws 97-102 (codified at WASH. REV. CODE §§ 71.09.010-.09.902 (2008)) (authorizing civil commitment).

12. Editor's note: 1990 Wash. Sess. Laws 50 (codified at WASH. REV. CODE § 9A.44.130 (2008)) (providing for the registration of sex offenders).

13. Editor's note: Roxanne Lieb, Vernon Quinsey & Lucy Berliner, *Sexual Predators and Social Policy*, 23 CRIME & JUST. 43, 67 (1998) ("Washington's 1990 law became the model for similar legislation passed in Kansas, Arizona, California, Wisconsin, Illinois, and North Dakota.").

significant part of this effort occurred when he led the Task Force in a series of public meetings across Washington. He personally led every community meeting, and he listened late into each evening as the victims of sexual violence and their families shared their grief. He assured them that he understood and that he would not rest until the criminal-justice system's response was the best it could be. He channeled this outpouring of pain into a comprehensive series of responsible reforms that the State Legislature adopted unanimously.

Whether he was leading a statewide response to a shocking crime, or announcing the prosecution of a capital case, Norm always recognized the importance of candor and openness in everything he did. In a profession that often treats the media as an enemy and elevates secrecy to a heightened goal, Norm encouraged open hearings, open courtrooms, and open justice whenever possible. Print and broadcast journalists respected him for always returning phone calls.

He became a national leader in prosecutorial circles, bringing the values and policies he pursued in King County to the national stage.<sup>14</sup> As a member of the American Bar Association's Criminal Justice Standards Committee, vice president of the National District Attorney's Association, and chair of the American Bar Association's Criminal Justice Section, Norm always brought his commitment to fairness and justice for all to each issue.<sup>15</sup> In 2006, he was awarded the Criminal Justice Section's Minister of Justice Award, recognizing his commitment to the maxim that "the duty of the prosecutor is to seek justice not merely to convict." Upon his death, that award was renamed the Norm Maleng Minister of Justice Award.<sup>16</sup>

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14. Editor's note: *See generally* Erik Lundegaard, *The Long, Ironic Life of Norm Maleng*, WASH. L. & POL., Aug.–Sept. 2002, at 18.

15. Editor's note: *See* CRIMINAL JUSTICE SECTION, AMERICAN BAR ASSOCIATION, ANNUAL REPORT: NORMAN MALENG: IN MEMORIAM 19 (2006–07), available at <http://www.abanet.org/crimjust/annualreport2007.pdf>, permanent copy available at <http://www.law.washington.edu/wlr/notes/84washlrev3n15a.pdf>; Nat'l Dist. Attorneys Ass'n, In Profile: Norm Maleng, [http://www.ndaa.org/ndaa/profile/norm\\_maleng\\_may\\_june\\_2004.html](http://www.ndaa.org/ndaa/profile/norm_maleng_may_june_2004.html) (last visited Feb. 4, 2009), permanent link available at <http://www.law.washington.edu/wlr/notes/84washlrev3n15b.pdf>.

16. Editor's note: For more information on Maleng's receipt of the American Bar Association Criminal Justice Section's Minister of Justice Award, see Am. Bar Ass'n, KUDOS, Nov.–Dec. 2006, <http://www.abanet.org/media/kudos/kudosdec06.pdf>, permanent copy available at <http://www.law.washington.edu/wlr/notes/84washlrev3n16a.pdf>; ABA/CRIMINAL JUSTICE SECTION, *People*, CRIMINAL JUSTICE SECTION NEWSLETTER, Winter 2007, at 19, available at <http://www.abanet.org/crimjust/newsletterwinter2007.pdf>, permanent copy available at <http://www.law.washington.edu/wlr/notes/84washlrev3n16b.pdf>. A description of award criteria can be downloaded from the American Bar Association Criminal Justice Section awards page, <http://www.abanet.org/crimjust/awards.html> (last visited Feb. 28, 2009), permanent copy available

Norm left another legacy as a prosecutor that continues to shape the justice community of his native state. The young men and women he hired and mentored now occupy leadership roles in all branches of government, the private bar, and the business community.<sup>17</sup> Many are minorities who have achieved significant “firsts” in their profession, including the first Latino and African-American judges for the United States District Court in Seattle.

Abraham Lincoln said that if you want to test a man’s character, give him power.<sup>18</sup> Norm Maleng was a powerful man in a powerful position for almost thirty years. He did not shy away from using that power, but he always used it for the common good. Never did he sow partisan divisiveness or seek personal advantage. The character formed in the Acme Valley guided Norm throughout his life, and that farm boy became the prosecutor Justice Jackson envisioned.<sup>19</sup>

As important as his legacy of criminal justice reforms is, the true essence of Norm Maleng shows in his relationships with people and his influence on everyone he encountered. Norm cared for everyone, and he showed that he cared.<sup>20</sup> He told all deputies to always remember that their most important responsibility was their families. Norm was personally involved in every important case that came into his office, and he understood the weight of the responsibility the people had entrusted to him. In every meeting with his legal adversaries, he was polite and gracious, a good listener who never used any of the tools of intimidation that people with great power sometimes wield. He carried his compassion for people into his dealings with defense attorneys and those they represented. He saw defendants as individuals with their own stories to tell and he always kept an open mind until he made a final decision. He always paired his decisions with an explanation of what had brought him to them.

The best illustration of how he exercised the awesome power of his position lies in his decisions to seek the death penalty. He never delegated these decisions, recognizing that the people had entrusted this responsibility to him personally. He approached each case knowing that

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at <http://www.law.washington.edu/wlr/notes/84washlrev3n16c.pdf>.

17. Editor’s note: See Nat’l Dist. Attorneys Ass’n, *supra* note 15.

18. Editor’s note: The complete quote is: “Nearly all men can stand adversity, but if you want to test a man’s character, give him power.” AND I QUOTE: THE DEFINITIVE COLLECTION OF QUOTES, SAYINGS, AND JOKES FOR THE CONTEMPORARY SPEECHMAKER 268 (Ashton Applewhite et al. eds., 2003).

19. Editor’s note: See *generally* Lundegaard, *supra* note 14, at 20–23.

20. Editor’s note: See *id.*; Nat’l Dist. Attorneys Ass’n, *supra* note 15.



his responsibility was to arrive at a just decision, sensitive to the victim, the community, and the defendant.

The decision that came to define his tenure as prosecuting attorney was his decision to forego seeking the death penalty for the Green River Killer in return for a plea of guilty and the killer's cooperation in recovering bodies and closing cases where families were unsure what had happened to their loved ones.<sup>21</sup> Dr. Martin Luther King, another of Norm's personal heroes, once observed:

On some positions, cowardice asks the question, Is it expedient? And then expedience comes along and asks the question, Is it politic? Vanity asks the question, Is it popular? Conscience asks the question, Is it right? There comes a time when one must take the position that is neither safe nor politic nor popular, but he must do it because conscience tells him it is right.<sup>22</sup>

His decision on the Green River case was not safe, politic, or popular. But once Norm determined that the decision was right, he had all he needed to go forward.

Norm was respected by all, and he was loved by many. Love is not an emotion one commonly associates with a prosecutor, but Norm's unique nature earned him this love. In Justice Jackson's words, he tempered zeal with kindness, sought truth and not victims, served the law and not factions. He exercised the power the people gave him with humility and wisdom. Norm's legacy lives in all of us he inspired.

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21. Editor's note: For general information about Gary Ridgway, the Green River Killer, see *Green River Killings*, SEATTLE TIMES, Nov. 19, 2004, <http://seattletimes.nwsources.com/html/greenriverkillings/>, permanent copy available at <http://www.law.washington.edu/wlr/notes/84washlrev3n21a.pdf>. On the decision not to seek the death penalty, see Press Release, Norm Maleng, Statement of Norm Maleng on Ridgway Plea (Nov. 5, 2003), available at <http://www.law.washington.edu/wlr/notes/84washlrev3n21b.pdf>.

22. Editor's note: Rev. Martin Luther King, Jr., *Remaining Awake Through a Great Revolution* (Mar. 31, 1968), in *A KNOCK AT MIDNIGHT: INSPIRATION FROM THE GREAT SERMONS OF REVEREND MARTIN LUTHER KING, JR.* 221–22 (Clayborne Carson & Peter Holloran, eds., 1998).