

2004

## In Memoriam: Professor Norman W. Thorson

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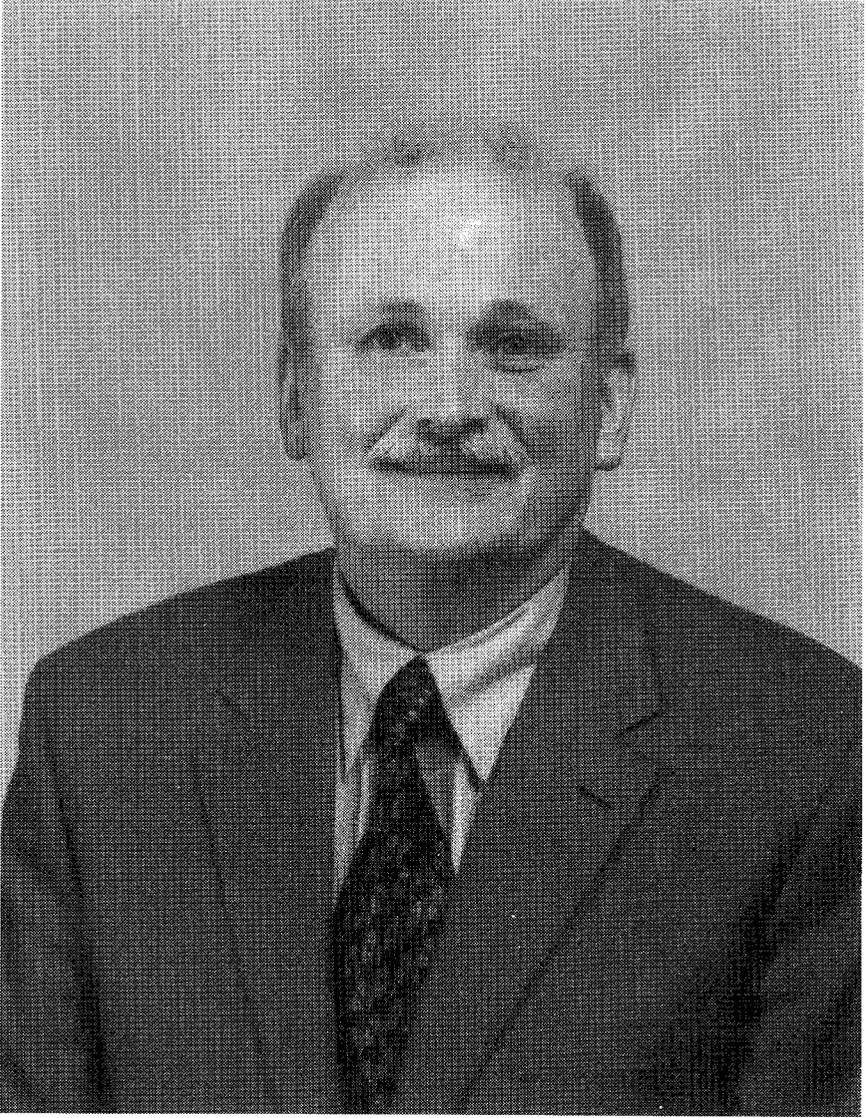
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### Recommended Citation

Harvey S. Perlman, John H. Davidson, Keith G. Meyer, and Richard S. Harnsberger, *In Memoriam: Professor Norman W. Thorson*, 83 *Neb. L. Rev.* (2004)

Available at: <https://digitalcommons.unl.edu/nlr/vol83/iss2/2>

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PROFESSOR NORMAN W. THORSON (1949–2003)

# NEBRASKA LAW REVIEW

# In Memoriam: Professor Norman W. Thorson

Harvey S. Perlman\*

We all expect at some point to be called upon to eulogize a friend or colleague, but it is far too soon for us to be engaged in such an occasion for Norm Thorson. He died in the midst of his career, where his potential contributions were as substantial as his past ones. While his family and friends are most directly affected by his untimely departure, the law and the University of Nebraska College of Law incurred a loss as well.

Norm engaged in both the preparation for and practice of his profession at the University of Nebraska, where he received four separate degrees. As an undergraduate, he was a member of the Innocents Society and a Regent's Scholar. As a law student, he graduated Order of the Coif and was an editor of the *Nebraska Law Review*. He married his wife Toni, a law school classmate. On joining the law faculty, he became a widely recognized expert on the laws governing agriculture, the environment, water, and other natural resources. He was a good teacher, a published scholar, an active participant in the intellectual conversations at the College of Law and within the national academic community.

He came by his academic interests from being raised on a farm in Mead, Nebraska. He devoted his scholarship to areas that directly impacted farm families. He was particularly qualified to do so, given his background and his degrees in both agricultural economics and law. His writings became influential in many different spheres. He wrote the seminal book on Nebraska water law with Professor Richard Harnsberger and, with others, a leading textbook on agricultural law.

He was engaged in local as well as national issues. He accepted the position as the first Nebraska representative to the Low Level Radioactive Waste Commission and led a major project on water policy established at the direction of the Nebraska Legislature. He also served as President of the American Agricultural Law Association and

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was a long-time trustee of the Rocky Mountain Mineral Law Foundation.

Norm was a gifted teacher, a sound scholar, a good person. He was curious about things, like legal puzzles, as well as such matters as athletics and fine dining. He could become excited about ideas, passionate in arguments, but was always civil in discourse. His passions smoldered below the surface but could be ignited instantly by someone else's silly comment or irrational assertion. Yet, he was invariably constructive in his comments, often times searching for compromises, for middleground to bring contending forces together. He did that often within the councils of the law faculty and within the greater University when he served as President of the Academic Senate.

The University played a very central role in his life and he cared about its future. And in so many ways he played a central role in the life of the University and certainly in the lives of those of us who had the opportunity to be his colleagues.

We who knew him will miss him. Those who did not will miss him also. Nebraska's most pressing challenge is the management of its water supplies and the connected issues affecting agriculture, the environment, and the state's way of life. No one would have expected Norm to solve these problems; indeed they may not be solvable. But no one should doubt that he would have made important contributions to ongoing efforts to solve them.

John H. Davidson\*\*

When John Strong invited Norm Thorson to join the Nebraska law faculty, he was repeating a process which had previously worked well for the school. During an earlier era the University of Nebraska College Law invited Roscoe Pound to the faculty. That scholar used his background in botany to vitalize a young American jurisprudence. Norm Thorson brought to the College, in his turn, a rich background in economics at just that time when economic analysis was being urged as an alternative course for our jurisprudence. His appointment assured that Nebraska's law students would understand the bracing challenge presented by the law and economics school.

As it happened, Norm evolved into more than a teacher to Nebraska law students. He quietly became a teacher to a large and dispersed group of professional colleagues, most of whom were reluctant to confront the difficulties posed by economic analysis. For this writer and so many others, Norm became our instructor. That we found this to be tolerable, even enjoyable, is by itself a tribute.

But, of course, Norm was invited to the Nebraska faculty for other reasons—not the least of which were his roots in Nebraska's agricultural tradition. Legal academics had for too long ignored this rich area of inquiry, and Norm became a national leader in the nascent field of agricultural law. His writing covered a daunting variety of topics, from commodities regulation to irrigation, antitrust to drainage, comparative law to crop insurance, and he always managed to return his analysis to the legal system's obligation to attend to the great American agricultural enterprise. His work will remain incomplete, however, and those who are familiar with it know that the best lay ahead.

But one does not write a memorial to a colleague merely because of his professional achievements; there must be more, and there is. We respected Norm, and enjoyed his company. He brought with him a source of quiet integrity, combined with intelligence and a sharp wit, so that people wanted to be with him, work with him, and simply hear what he had to say. It is in this that we register our loss.

Keith G. Meyer\*\*\*

I first met Norm when a small group of people interested in agricultural law came together to explore the formation of an organization designed to promote and discuss agricultural law. I liked him immediately. His direct approach, his knowledge of the agriculture industry, his quick wit and his analytical skills enhanced any conversation. Our friendship grew, and I am a better lawyer, teacher and person as a result of it.

The American Agricultural Law Association (“AALA”)<sup>1</sup> grew out of this meeting. Norm worked tirelessly to develop and promote the AALA. Today the ALAA is the only national professional organization that focuses exclusively on the legal needs of the agricultural community. As its website provides:

Crossing traditional barriers, [AALA] offers an independent forum for investigation of innovative and workable solutions to complex agricultural law problems. This role has taken on greater importance in the midst of the current international and environmental issues reshaping agriculture and the impending technological advances which promise equally dramatic changes.<sup>2</sup>

AALA awarded Norm its highest honor—the Distinguished Service Award. This represents a tangible recognition of his commitment to this association and his commitment to the study and development of agricultural law in general.

Professor Thorson was and continues to be recognized worldwide as an excellent scholar in the area of agricultural law. Norm’s scholarship in agricultural law has insured respectability and permanence of the field. He co-authored the first law school casebook in agricultural law, which was published in 1985, and he has written extensively in the areas of agricultural law, water law, and related environmental areas.

I worked with him on a number of projects over the past twenty-five years. His work was always of the highest quality. I have read almost all of his published works. I am extremely impressed with the breadth of his scholarly interest, his high standards for quality of professional output, and his understanding of the role that law can play in a complex and ever-changing society.

Norm Thorson was a true renaissance person. He was not only a lawyer and an economist, but he also was keenly interested in a wide range of areas in addition to agriculture, such as university govern-

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1. See The American Agricultural Law Association website, at <http://www.aglaw-assn.org/index1.html> (last visited Dec. 15, 2004), for general information on the organization.

2. *Id.*

ance, athletics, geography and the arts. He thoroughly enjoyed traveling and exploring new areas. He had a keen eye for airline bargains that provided an excuse for him and his family to visit interesting areas.

Norm's work and the memories of him will survive his death. However, I miss him and will continue to miss him.

Finally, I do not understand why such bad things happen to such good people. But, let us use this human tragedy as a catalyst to stimulate each of us to take time to appreciate the many things that we take for granted, and also to explicitly tell those people such as parents, spouses, friends and mentors who have supported us how much we appreciate and love them.

Richard S. Harnsberger\*\*\*\*

By way of introduction, I am an old friend of Norman and Toni Thorson. Today I write in appreciation of Norm's life and with affection for the person I called a close friend.

Norm was among the very best students I ever taught, so I was a strong proponent of him joining our faculty in 1977. I had been a member of his Ph.D. committee and knew he would bring a wellspring of creative ideas to the school. At first he taught environmental law and agricultural subjects, but when I partially retired, he took over both the water seminar and class. He had a wonderful classroom manner and through the years his student evaluations were always excellent. In the classroom he expected and got much from his students, and he was an extraordinarily valuable contributor to the health and vibrancy of the University of Nebraska College of Law. He was a superb writer—concise, precise, and clear—and despite the fact he is no longer here, I often think about him, especially when I am writing. Norm was always helpful, directing me to useful books and other sources. And when I talked to students whose papers I was advising, I almost always urged them to consult with Norm.

Norm's interest in water law resulted from his extensive training in economics and his quick and apprehending mind. He recognized at an early time in his career that water is not private property in the usual sense, nor is it public property. Rather, water is different and that is why the subject fascinated him as it does me. As Michael Meyer said in his book *Water in the Hispanic Southwest*,<sup>1</sup> one can allow his crops to rot in the field while neighbors go hungry, but he cannot waste his water while his neighbor's fields go dry. Water is different, and, due to the complexity of water law, it has attracted some of the law school world's cutting-edge thinkers. Norm delighted in considering the many diverse and complex problems that he foresaw would continue to require rigorous analysis. He was a leader in advocating the incorporation of economic principles in water allocation, and his background made him a particularly effective spokesman.

Norm had many interests and published a number of articles in well-known journals. But at the state level, he perhaps is best known for his articles in the *Nebraska Law Review*<sup>2</sup> and for two major works,

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1. MICHAEL C. MEYER, *WATER IN THE HISPANIC SOUTHWEST: A SOCIAL AND LEGAL HISTORY* (1984).
2. See generally Norman W. Thorson, *Agricultural Law Symposium: An Introduction*, 73 NEB. L. REV. 1 (1994); Richard S. Harnsberger, Josephine R. Potuto & Norman W. Thorson, *Interstate Transfer of Water: State Options After Sporhase*,

one in collaboration with me and the other with Professor Josephine Potuto and myself. The first is a 400-page book titled *Nebraska Water Law and Administration*.<sup>3</sup> The second is a three-volume report prepared at the request of the Nebraska Unicameral. A modified version of the report was published in the *Nebraska Law Review*.<sup>4</sup>

After the United States Supreme Court decided the case *Sporhase v. Nebraska ex rel. Douglas*,<sup>5</sup> a plethora of articles appeared about the decision, but George Gould, author of the country's leading water law casebook, made the unusual decision to cite only one authority in his 2000 treatise. He wrote, "The effect of the negative commerce clause on state regulation of interstate water export is thoroughly analyzed in Richard S. Harnsberger, Josephine R. Potuto & Norman W. Thorson, *Interstate Transfers of Water After Sporhase*, 70 NEB. L. REV. 754 (1991)."<sup>6</sup>

Norm's scholarship included a focus on the practical as well as the theoretical, and his influence on policy decisions was great. Pursuant to requests from the Nebraska Natural Resources Commission, Norm made a number of reports. Subjects included transfers of stream water, drainage problems caused by diffused surface waters, beneficial uses, preferences, conflicts between riparian users and prior appropriators, and conjunctive use. He later expanded the latter report and wrote the definitive piece on groundwater storage, entitled *Storing Water Underground: What's the Aqui-Fer?*, in a 1978 issue of the *Nebraska Law Review*.<sup>7</sup>

An excellent speaker, he frequently talked to groups such as the Rocky Mountain Mineral Law Foundation in Boulder, the Annual Nebraska Water Conference, the Water Law Section of the Nebraska State Bar Association, meetings of Natural Resources Districts, and so on.

Those of us who were privileged to know him were beneficiaries of his incisive prose and endless conversations about matters in which he was interested. Norm was a leading water law scholar of his generation until he died, too early, just short of his fifty-fourth birthday. He could have been a professor of just about anything, but I think law was where he belonged.

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70 NEB. L. REV. 754 (1991); Norman W. Thorson, *Storing Water Underground: What's the Aqui-Fer?*, 57 NEB. L. REV. 581 (1978).

3. RICHARD S. HARNSBERGER & NORMAN W. THORSON, *NEBRASKA WATER LAW & ADMINISTRATION* (1984).
4. Richard S. Harnsberger, Josephine R. Potuto & Norman W. Thorson, *Interstate Transfers of Water: State Options After Sporhase*, 70 NEB. L. REV. 754 (1991).
5. 458 U.S. 941 (1982).
6. GEORGE A. GOULD & DOUGLAS L. GRANT, *CASES AND MATERIALS ON WATER LAW* 623 (6th ed. 2000).
7. 57 NEB. L. REV. 581 (1978).

I am certain that Norm's contributions to both Nebraska and national water law will long endure, and, in the future, the profession will build on themes he so ably identified.