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### DEAN BERNARD WOLFMAN: HEROES NEED NOT BE GODS

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An earliest recollection: The Class of 1948 was special, mostly veterans fresh from World War II. They were a little older than our current students. (I, much younger then, saw them as virtually my contemporaries.) They had the toughness of men (this was before the women came) who had seen something of the world of reality and responsibility. They had the idealism that was possible for those who had known Roosevelt and crushed Hitler. Bernard Wolfman was of the vintage, perhaps even typical if one disregarded such exoticisms as an Army-imposed familiarity with Norwegian language and culture.

In my course on antitrust law, experimenting with subject matter and technique, I fell one day into the mode of deadpan irony. We were on the subject of trade associations, and I elected to probe the materials by asking the class to help draft a high-sounding statement of objectives (for example, research, education, fellowship) to be incorporated in the articles of association, while leaving the industry maximum freedom to pursue crasser aims by collective restraint of trade. This dastardly project seemed to enlist the crowd. But at the end of the hour a stern delegation came to the front of the room and, in effect, denounced me for insensitivity to the ethical standards of the pro-

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fession; I was accused of teaching lawyers how to deceive administrative agencies and courts. The leader of the delegation was Bernard Wolfman. He was only partially appeased by my declaration then, and publicly in class on the next day, that my object had been to demonstrate the need for reading pious affirmations in trade association charters with some skepticism, and to forearm prospective prosecutors, administrators, and judges.

A recent vignette: Dean Wolfman's scholarly and devastating analysis of Justice Douglas' tax opinions\* has just been published. He had begun the investigation long before as an outgrowth of a case he argued before the Supreme Court of the United States while still in the private practice of law. The case had gone against him, with only Justice Douglas noting an unexplained dissent. Never one to merge advocacy with self-deception, our Dean-to-be saw no basis for the Justice's vote in favor of his client. Curiosity soon led him to examine other instances of the Justice's votes against the Government on tax questions. When it began to appear that Justice Douglas' votes on tax questions could be explained only by bias and default in the judicial obligation to take reasoned positions, the manuscript was laid away.

Motivations in such situations are necessarily complex. Surely we may suppose that the pressures of a busy professional life put their own brake on the scholarly impulse that manifested itself here. But anyone who knows Bernard Wolfman can easily imagine the rest of the motivation. There would be caution with regard to a thesis so apparently incredible, a desire for confirming evidence, for comparison with Justice Douglas' work in non-tax fields. There would be aversion to the harsh human impact of so negative an appraisal late in the long and admirable career of Justice Douglas. Bernard Wolfman would hate the role of discrediting a great liberal figure whose views on civil liberties, foreign policy, protection of the environment, and other social issues were so close to his own. But ultimately a notion of accountability would tip the scales in favor of publication, for Wolfman believed that not even heroes should be deified. There would also be the conviction that educators owe their students demonstrations of unswerving search for truth.

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\* B. WOLFMAN, J. SILVER, & M. SILVER, *DISSENT WITHOUT OPINION: THE BEHAVIOR OF JUSTICE WILLIAM O. DOUGLAS IN FEDERAL TAX CASES* (1975).

One day, transplanted to academe, Bernard Wolfman found himself expounding tax law before his, as usual, entranced class in Income Tax I. An opinion of Justice Douglas was being dissected, not altogether respectfully. At the end of the hour a stern delegation of two students, who later became co-authors of the Douglas book, confronted him. "Why are you demolishing so great a man?" they wanted to know. "Was I wrong?" the Dean asked. "No, but surely this was a momentary aberration of the Justice that might have been spared this attack." Thence easily to the students' enlistment to carry through the inquiry.

My early recollection and recent vignette serve as two points fixing the consistent line of the Dean's career, the line of conscience and commitment. Close to that line, one finds without surprise an impressive array of public service activities in which he took leadership and responsibility: the American Civil Liberties Union (President of the Philadelphia Chapter, member of the National Board of Directors); the American Association of University Professors (General Counsel); the ABA Committee on Taxation and Its Relation to Human Rights (Chairman); World Peace Through Law Center (Vice-Chairman, International Legal Education Section); Faculty Senate of the University (Chairman); consultant to the Treasury; director of philanthropies; college overseer—the list is astonishing. And always he has been deeply involved in the core of his professional responsibilities, creative reform of the national tax system, including pioneering work on the negative income tax.

How did we ever entice such a man into the cockpit of deaning? The storm signals were already up when Wolfman took the helm. Students were demanding representative participation in educational decisions. Grading systems and the curriculum were under attack. There were strenuous contests to be fought over grant or denial of academic tenure (scholars who "can't teach"? Teachers who don't "schole"?) There were cruel pressures on admission procedures, as hundreds of highly qualified applicants lost out in the impersonal competition of Law School Admission Test, and other hundreds asserted controversial priorities in admission to correct racial distortions. Universities had become the battleground for broad social and political issues such as the Vietnam War and urban housing. New subjects—environmental law, health law, education law, women's rights, to name a few—had to be integrated into the curriculum. New educational methods, particularly substituting field work

and clinical experience for more conventional classroom courses, called for experimentation, money, time. Mushrooming claims had to be matched with ever-scarcer resources.

The Dean presided over this maelstrom of forces with a serenity securely based on integrity, courage, and sagacity. Students gained a voice in faculty meetings and committees. Earnestly considered concessions took the heat off ethnic confrontation. The necessary curricular compromises were arranged. The quality of the student body and the prestige of the faculty rose. With the aid of a doughty band of Law Trustees, the Dean performed a countercyclical miracle in raising more endowment funds in two years than had been raised in the preceding century.

Having led us through that period of stress to the present era of tranquility and civility, Dean Wolfman has earned his forthcoming year of peace and tennis at the Center for the Advanced Study of Behavioral Sciences. We shall welcome him back as Kenneth W. Gemmill Professor of Tax Law and Tax Policy, and hope meanwhile to find a successor worthy of him. Our new leader, like the Dean now retiring, will presumably be human, have a fault here or there, wound an ego now and then in the sometimes bruising process of producing consensus. A dean need not be a god; it is enough that he is a hero.