

*Justice Norman L. Epstein*

1933-2023

BY JOHN R. WIERZBICKI

**N**ORMAN L. EPSTEIN was born April 9, 1933, in Los Angeles, the year of two great local events, the Long Beach earthquake and the Griffith Park fire — harbingers that something extraordinary had occurred. His father owned Efferg Drugs, on the corner of Third and Hill streets, at the base of Angels Flight. His mother was an amateur pianist and painter.

Norm, an only child, was wracked with asthma, and his parents moved often, hoping to find a home that would be healthier for him. Eventually, his health improved and the family landed on Croft Avenue in West Hollywood, at the time a predominantly Jewish neighborhood. Across the street lived the great pianist André Previn, who had fled Hitler's Germany. Norm's mother hired Previn to give piano lessons to both her and to Norm. Norm would later say that, in his case, the lessons were unavailing.

Norm persevered in his studies and became valedictorian at Fairfax High School. Notable alumni from that era include actor David Janssen, musician Herb Alpert, and football quarterback-turned-politician Jack Kemp. Norm went on to UCLA, where he benefited from a tuition-free education, an experience for which he remained grateful. He met Ann Snyder during his junior year, and they married after his first year of law school. Ann was a teacher but left that profession once they had two children: Mark (who is now a Superior Court judge) and Carol. She later started a children's book fair company. Ann predeceased Norm, passing away in 2008.

Norm was torn between entering a doctoral program in history or political science and going to law school. He later said that he attended UCLA Law School because he could afford to go there, but in the process became a life-long Bruin. During the summer, he worked for Carnation Dairy, delivering milk in a nonrefrigerated truck that he had to fill every day with burlap bags of ice. Norm later had the good fortune to be hired as a summer clerk by Legislative Counsel Ralph Kleps, a job that Norm said taught him more about the process of law and legislative drafting than anything else he could have done.

On graduating from law school in 1958, Norm sought a position with the Office of the California Attorney General, then headed by Edmund G. "Pat" Brown. He recalled that during the bulk of his interview, he sat quietly while the head of the L.A. office was on the phone with Brown about the upcoming gubernatorial election, in which Brown was running. Norm later joked that

they were forced to hire him because he heard too much.

In the early 1960s, Norm was assigned to write an Attorney General Opinion addressing whether a school district would violate the free school provision of the state Constitution by charging students a dime to bowl at a bowling center as part of an elective gym class. Norm wrote that it did.<sup>1</sup> Soon after, he was ushered into Stanley Mosk's office. Mosk had succeeded Brown as attorney general. As Norm entered, Mosk was sitting behind his desk chatting with someone. Norm sat to the side. Finally, Mosk asked the visitor what he wanted. The visitor, who was with the bowling industry, expressed deep concern about the possible effect of an unfavorable opinion. Mosk turned to Norm and asked: "What's your view?" Norm, consistent with the published opinion, said he thought the school's charge was unconstitutional. "Well, I guess that's it," Mosk responded, and dismissed the visitor. Norm never forgot that episode.

Norm didn't stay long with the attorney general's office, however. The California State College (now California State University) system had been formed, and the attorney general assigned Norm to do legal work for the system while it searched for its first general counsel. He must have impressed them, because he was asked to take the role, despite his having been in practice only three years. He would go on to create and lead the counsel's office of 11 attorneys to serve the 19-campus system and the California Maritime Academy.

During the 1960s, tumult enveloped the state college system, of which the violent student protests at San Francisco State during 1968–1969 were the most notable. As the campus turmoil came to a head, the AFL-CIO-affiliated teachers' union threatened a general strike across the state college system. Norm successfully reached a settlement with the union and averted the strike. But not everyone was happy, and at the following Board of Trustees meeting, a trustee who thought Norm had acted beyond his authority moved a vote of no confidence. No one seconded.

Governor Ronald Reagan, who attended the Board of Trustees meetings due to his position and so personally got to see Norm at work, later rewarded him for his efforts on behalf of the state college system. Despite the fact that Norm was a Democrat, the Republican Reagan



Norman Epstein. Photo: California Courts.



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1. Opinion No. 61-137 (1962) 39 Cal. Atty. Gen. 136.



Left to right: Judge Ronald Tochterman, Sacramento County Superior Court; Justice George Nicholson, Court of Appeal, Third Appellate District; Bernard Witkin; and Presiding Justice Norman L. Epstein, Court of Appeal, Second Appellate District, Division Four. Photo by Brenda Nicholson, circa 1991.

appointed Norm to the Los Angeles Municipal Court in one of the last acts of his administration.

In 1979, just four years after joining the court, Norm's municipal court colleagues elected him assistant presiding judge, which typically meant that Norm would be presiding judge the following year. But he did not serve the municipal court in that position because Governor Jerry Brown, a Democrat, elevated him to the Los Angeles Superior Court in March 1980. Norm tried again in 1990, running for election as assistant presiding judge in the superior court, as a stepping stone to becoming presiding judge. But a third governor had other plans. This time, Republican George Deukmejian intervened by nominating Norm to the Second District Court of Appeal. It took a quarter of a decade, and four governors, for Norm to finally reach his goal. In 2004, Governor Arnold Schwarzenegger, a Republican, appointed Norm as presiding justice of the Second District's Fourth Division.

Norm once said he never found being on the Court of Appeal boring, and proclaimed that one of the job's great benefits was the variety of material to write about. He would go on to write more than 2,000 opinions, over a hundred dissents, and a smattering of concurring opinions as an appellate justice. But when asked to identify a particular stand-out case, he demurred, and instead pointed to his whole body of work.<sup>2</sup>

When he started as a judge in 1975, Norm recognized that he knew little about criminal law. To educate himself, he read, analyzed, and wrote summaries of every new California criminal case. The California Continuing Education of the Bar published these as the *Digest of California Criminal Cases*, which grew to five volumes before it ceased publication in 1980. Norm also wrote a monthly commentary on criminal cases for the California Judges Association.

If self-education was Norm's priority, educating others was his passion. Just a few years after taking classes at

the California Judicial College as a new municipal court judge, he was teaching incoming judges. He would go on to become dean of the college in 1981 and a two-time recipient of the Bernard Jefferson Award for Judicial Education.

Norm's involvement with the college led to some of the most important relationships in his life. Two notable ones he would call the "Bernie of the South" and the "Bernie of the North." The southern Bernie was Bernard Jefferson of Los Angeles, who was the second African American appellate judge in California and a renowned expert on evidence issues. For seven years, Norm and Jefferson taught an evidence course together at the Judicial College, along with a third lecturer. She was Ann Rutherford, a superior court judge from Butte County.

After spending a few years as a widower, Norm married Rutherford. Los Angeles Superior Court Judge David Yaffe, a close friend of Norm's from his days at UCLA and his biking buddy, officiated at the wedding. On weekends, Norm and Yaffe used to bicycle from Norm's house in Mar Vista up over the hill, have breakfast in the San Fernando Valley, then bicycle back. In later years, they had to cut it back to biking to Marina del Rey and back.

The northern Bernie was Bernie Witkin, who hailed from Berkeley and helped found the college. In 1980, Witkin was seeking a potential co-author on criminal law. In just five years after becoming a municipal court judge, Norm had developed himself into a recognized expert in the field, and colleagues at the college recommended him to Witkin. Witkin called Norm to invite him to collaborate on *Crimes* and *Criminal Procedure*, which in 1988 were combined into one and renamed Witkin and Epstein, *California Criminal Law*. Their co-authorship would continue until Witkin's death in 1995.

During his long judicial career, Norm accumulated many awards, including the State Bar's Bernard Witkin Medal (2001) and the Judicial Council's Jurist of the Year (2007). On his retirement in 2018, the *Metropolitan News-Enterprise* said that Norm was "generally regarded as one of California's outstanding appellate jurists" and was "known both for his affability and scholarship."<sup>3</sup> But as with most things dealing with California law, perhaps Bernie Witkin summed it up best. In January 1995, the *Met News* hosted a dinner honoring Norm as its "Person of the Year," at which Witkin was invited to speak. Witkin, who would die before the year was out, said this about Norm: "I will soon reach my cabin in the sky. Not so long afterwards, you will arrive on your bicycle — 10 speed? More likely 50 speed." But before that day comes, Witkin exhorted Norm to continue the good fight in their joint endeavor to "preserve the rule of law and the free enterprise system of this great Western

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2. Transcript of Interview by Larry Rubin of Norman Epstein (July 20, 2016), California Appellate Court Legacy Project, 43. [https://www.courts.ca.gov/documents/Norman\\_Epstein\\_7124.pdf](https://www.courts.ca.gov/documents/Norman_Epstein_7124.pdf) [as of Oct. 31, 2023].

3. "Presiding Justice Norman L. Epstein Slates Aug. 22 Retirement From Court of Appeal," *Metropolitan News-Enterprise*, June 13, 2018, <http://www.metnews.com/articles/2018/epstein061318.htm> [as of Aug. 9, 2023].

democracy.” He concluded: “I’m glad that I lived long enough to know you.”<sup>4</sup>

I echo Witkin’s statement. Norm was one of the first people I met after my appointment as editor of the Witkin treatises, and we worked together on *Criminal Law*. I then

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4. Witkin, handwritten notes attached to letter dated Dec. 19, 1994 from Jo-Ann Grace, president, *Metropolitan News Company*, Witkin Archive, California Judicial Center Library, 2.

got to know him better when I interviewed him for the CSCHS’s oral history project on Bernie Witkin. He was unfailingly gracious and erudite. His death is a great loss.

Norman Epstein died on March 24, 2023, at age 89. ★

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