

PRESIDING JUSTICE ARTHUR GILBERT

March is the Cruellest (Cruellest) Month

This year T. S. Eliot's opening line in *The Waste Land* is a month late. Justice Norman Epstein passed away on March 24. But April is both a cruel and a positive month for me. It is cruel because of our loss, but positive because it is my opportunity to remember and celebrate with you the remarkable life of my colleague and friend, Justice Norman Epstein.

Dateline—the day after Labor Day, September 1975, that was only... (gulp) nearly 48 years ago, the day I first met then Municipal Court Judge Norman Epstein, hereinafter Norm, where I was assigned to the Los Angeles Municipal Traffic Court, alleged to be the largest traffic court in the world. Pardon the informality, but even with his impressive credentials and awards, he was Norm to his friends and colleagues. For the most part, I will employ the same informal reference to other judges mentioned in this tribute as I do to Justice Epstein... I mean, Norm. Inside tidbit for loyal readers—many judges do form close friendships. I won't hazard a guess about who, if any, are buddies on the United States Supreme Court. I bet ... never mind.

Short historical digression for younger readers puzzling over what is a municipal court. Norm would approve this aside but would write a comprehensive scholarly exegesis on the subject. Once there were municipal courts throughout the State of California, including the County of Los

Angeles. Back in 1975, if memory serves me correctly (lately it has been falling down on the job), the Los Angeles Municipal Court had jurisdiction over misdemeanor criminal matters and civil cases with a jurisdictional limit of \$5,000. Over the years the limit increased to \$25,000. In 1998 voters passed a constitutional amendment that gave voters in every county the option to unify the municipal and superior courts into a single unified superior court.

As the Dean and teacher at the California Judges College, Norm was instrumental in assuring that California maintains its preeminence as the outstanding and most influential judiciary in the nation.

Within the next few years, all 58 counties in the state voted for unification. This automatically “elevated” all municipal court judges to the superior court. The judges in the photo were already superior court judges when the measure passed. I leave it up to the reader to guess how most of the then municipal and superior court judges voted on the issue.

So getting back to the day after Labor Day, 1975, the first day that then Judge Elwood Lui, now Administrative Presiding Justice Lui (I mean, Elwood), and I met, and the first time we both met Norm. Norm was then Governor Ronald Reagan’s last appointment to the California bench. It occurred on Reagan’s last day in office. Norm, having the entirety of constitutional law at his fingertips, wished to avoid a *Marbury v. Madison* situation and flew to Sacramento to make sure Governor Reagan signed the appointment before midnight.

I don’t think he had anything to worry about. I bet Governor Jerry Brown would have appointed Norm if the order had not been signed before midnight. Norm was, to the best of my knowledge, always a Democrat. Governor Reagan appointed him to the municipal court; Governor Brown appointed him to the Los Angeles Superior Court; Governor George Deukmejian appointed him to the Court of Appeal; and Governor Arnold Schwarzenegger appointed him to the position of Presiding Justice of Division 4 of the Court of Appeal. Norm was a judge for all seasons and all parties.

After all, the Chief Justice of our nation’s highest court reminded us that “We don’t work as Democrats or Republicans.” A discussion of whether this dictum (or is it a wish?) is valid in our high court I leave for another day. But

it is universally accepted that Norm is an example of Chief Justice Robert's apothegm. Wondering about the last word of the previous sentence? It's Norm looking over my shoulder as I write and speaking to me. "Go ahead, Art, do it."

So where were we? Oh, yes, for the second time, the day after Labor Day, 1975. Francis Rothschild had been sworn in approximately two weeks earlier. Norm was by then a veteran having served on the traffic court for approximately seven months. On that first day Norm and now Presiding Justice Rothschild, hereinafter Fran, took us to lunch at the furniture mart, a wholesale showroom of furniture with a restaurant upstairs open to the public. During lunch Norm and Fran discussed the joy they took in comparing notes over Cal.3d and Cal App.3d while Elwood and I picked at our salad niçoise. At that time Elwood and I were trying to figure out if the left turn was safe. After that lunch we almost turned in our resignations.



This photograph was taken almost a half century ago, at the formal swearing in on October 23, 1975, at the County Courthouse in Los Angeles. From left to right is now Administrative Presiding Justice Elwood Lui, Court of Appeal, Second Appellate District, State of California, and Presiding Justice Arthur Gilbert, Division Six, Presiding Justice Norman Epstein, Division Four, and Presiding Justice Francis Rothschild, Division One, all of the Court of Appeal, Second Appellate District, along with Judge Loren Miller, Superior Court, County of Los Angeles. (This photograph was provided by Justice Gilbert. Judge Miller died on December 5, 2011. Presiding Justice Epstein died March 24, 2023.)

Norm became an avid bicyclist. I could have used “biker,” but somehow that term just doesn’t seem to fit Justice Epstein, I mean Norm. He and his sidekick Superior Court Judge David Jaffe would spend vacations cycling the back roads of America. Even while on these special trips away from the court, Norm’s logical brain was alert. One time while peddling along a rural road in what I think could have been a southern state, the “bikers” noticed they were being chased by a ferocious pit bull. One quick look over his shoulder, and Norm made no attempt to pedal faster. His biking companion yelled, “How can you be so calm? The dog is gaining on us!” Norm replied with insouciance, “The dog has a chicken in his mouth. That’s a prize he will not give up.”

At judge’s meetings, in fact, at any gathering, when Norm spoke, everyone listened. I remember the first municipal court judge’s meeting I attended. Norm spoke and silence fell upon the room. He used the word “insouciance.” Thereafter I brought a dictionary and thesaurus to future meetings.

Norm’s updates on criminal and civil appellate opinions were a must for everyone in the legal profession. His lectures were packed, and it was an ideal forum for me to learn what I meant in opinions I authored. The redoubtable Bernie Witkin told me how pleased he was to have Norm working with him on the Witkin treatises. As the Dean and teacher at the California Judges College, Norm was instrumental in assuring that California maintains its preeminence as the outstanding and most influential judiciary in the nation. So, Norm, it is not truly goodbye. You stay with us, and your influence continues to inspire.

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About the Author



Arthur Gilbert has been a judge for almost a half century. He is presiding justice, Court of Appeal, Second Appellate District, Division Six, State of California. He was appointed to the court as an associate justice in December 1982. He was elevated to presiding justice in 1999. He began his legal career in the Los Angeles City Attorney's Office, as a deputy city attorney trying cases in the Criminal Division. He entered private practice a year later and practiced law for a decade. He was appointed to the Los Angeles Municipal Court in 1975. He was elevated to the Los Angeles Superior Court in 1980. In his private life, he is a writer and a musician. He regularly writes for Los Angeles Daily Journal, California's largest legal newspaper. He is a concert pianist and is the lead pianist with the Los Angeles Lawyers Philharmonic Orchestra..