

TRIBUTE TO NORMAN DORSEN

I am delighted and honored to participate in this tribute to Norman Dorsen, my classmate in the Harvard Law Class of 1953 and my friend ever since. I know of no classmate who more richly deserves an appreciation of his remarkable accomplishments—as teacher, scholar, advocate, and leader—over the last 51 years.

In the brief time I have today—one-third of Andy Warhol’s fifteen minutes in the limelight—I will not try to relate all that I, as a constitutional law maven, associate with Norm’s career; for example, his successful arguments before the Supreme Court in such landmark cases as *Levy v. Louisiana*¹ and *In re Gault*.² Nor will I speak of his role at this law school, whose dramatic rise in quality and reputation surely owes much to Norm’s contributions, or his skillful leadership of the ACLU during some difficult years.³ Other speakers, I am confident, will address those contributions. Let me instead illustrate on a personal level what Norman has meant to me and my family.

Thinking back to our law student years, I—like our classmate Ken Karst—remember Norm as a young man with an “exceptionally sunny disposition in good times and bad.”⁴ But this sunny disposition was not that of an empty-headed youngster; rather, it was a reflection of Norm’s equilibrium as well as ebullience, and his inexhaustible energy and thoughtfulness, even then.

After graduating from Harvard, I, as a Navy veteran, went to New York City to clerk for Judge Learned Hand and Norm entered military service in Washington. Though the geographical separation barred personal contacts then, my wife and I watched Norm’s participation in the historic televised Army-McCarthy hearings of over two months.

I do not know what the Nielsen ratings were for those many hours of television from April to June 1954, but I do know that many viewers were transfixed by the hearings. As Norm himself has said, “[Joe McCarthy’s] constant exposure to the public during two

1. 391 U.S. 68 (1968) (applying “heightened scrutiny” to legislation discriminating against children born out of wedlock and launching the Court’s development of “intermediate scrutiny” in equal protection cases).

2. 387 U.S. 1 (1967) (extending for the first time due process protections to defendants in juvenile courts).

3. See SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU 323-38 (2d ed., Southern Illinois Univ. Press) (1999).

4. Kenneth L. Karst, *The First Amendment, the Politics of Religion and the Symbols of Government*, 27 HARV. C.R.-C.L. L. REV. 503, 503 n.* (1992).

months of hearings helped to erode his immense power and led eventually to his censure by the Senate in the fall of 1954.”⁵

In 1954, my wife was pregnant with our older son, Daniel. Her pregnancy was a difficult one, and her doctor ordered her to bed for some months. Norm probably does not know how important a role he played in Barbara’s life and mine during those days.

Confinement to bed for several months risks endless boredom. Barbara and I owned no television when the hearings began; but as soon as I learned of them, I went to Macy’s on 34th Street and bought the least expensive set I could find. During the day, Barbara watched the hearings religiously. They probably saved her from the insanity that boredom can produce. She was absorbed not only by the antics of Senator McCarthy and Committee Counsel Roy Cohn as well as the fine work of Special Counsel for the Secretary of the Army Joseph Welch, but also by the image of Norm Dorsen on that small television screen, usually sitting behind the witness of the day. For he had become an Assistant to the General Counsel of the Army.

I, of course, was busy in Learned Hand’s chambers during those months, so I could not see the live hearings. When I would reach home in the evenings, Barbara would tell me about the events of that day (and for how long Norm had been on the screen). Fortunately, television carried evening rebroadcasts of the hearings, and I would sit on our bed with Barbara to see the reruns until we’d fall asleep. We were so absorbed in them that we were rather sorry when the hearings ended in mid-June—those hearings were far more fascinating, I assure you, than today’s “reality” features on TV.

By mid-summer of 1954, I went to Washington for a clerkship with Chief Justice Earl Warren. After some doubts about Barbara’s ability to accompany me, her doctor gave permission. The pregnancy went well, no doubt in part because of the hearings on our TV twice a day. Our son was born on January 4, 1955, with a Bris, a circumcision ceremony, at which Felix Frankfurter and Earl Warren were the co-godfathers (the next morning, the Chief thanked me for inviting him to the ceremony and told me that, after his many years of public life in California as District Attorney, Attorney General, and Governor, this was the first time he had ever been invited to a “Bar Mitzvah”!).

I think it appropriate today that I, belatedly, proclaim Norm Dorsen as the honorary third godfather of Daniel Gunther—Norm,

5. NORMAN DORSEN, *FRONTIERS OF CIVIL LIBERTIES* 67-68 (1968).

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after all, contributed far more to Barbara's well-being during her pregnancy than either Justice Frankfurter or Chief Justice Warren had.

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