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TRIBUTES TO MELVILLE B. NIMMER

For Mel Nimmer

Kenneth L. Karst*

It would be unthinkable for this inaugural issue of the *UCLA Entertainment Law Review* to be dedicated to anyone other than Melville B. Nimmer. The law school course called Entertainment Law was his invention, and it evolved naturally from his own life in the law. Before he became a scholar-practitioner, he was a practitioner-scholar. He represented screenwriters and others in the entertainment industry, and while he was carrying on this demanding practice he wrote and published *Nimmer on Copyright*, a four-volume treatise on copyright law. Not just *a* treatise, but *the* treatise on that subject. At times Mel had mixed feelings about the treatise's standing as the nation's leading "authority" on the subject. Long after he had joined the UCLA law faculty, he was engaged as counsel in a major copyright case that required him to argue a position contrary to the position he had taken in his treatise. In one sense, it was an issue on which Mel couldn't lose—but, of course, neither could he win. If I remember correctly, the judge followed Nimmer the authority, ruling against Nimmer the advocate.

Even the title Mr. Entertainment Law is inadequate to define Mel Nimmer's place in the legal world. He became a leading scholar on the First Amendment, and his treatise, *Nimmer on the First Amendment*, joined *Nimmer on Copyright* on library shelves throughout the nation. In this field, too, he put his learning and his practical skills to

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work in live cases. The one case of Mel's that all law students know is *Cohen v. California*,¹ a case that tested the courage of his convictions. Cohen, it will be remembered, chose the Vietnam War as the time, and the Los Angeles County Courthouse as the venue, for wearing a jacket emblazoned with a four-letter incivility addressed to the military draft. A number of civil libertarians, some of them famous, urged Mel not to seek Supreme Court review of Cohen's conviction for disturbing the peace by offensive conduct. These cautious folks thought the case was a loser, and that the Court's opinion would make unwelcome law. The naysayers not only misjudged Justice Harlan's good sense; they also reckoned without Mel Nimmer's powers of persuasion. The story of the oral argument is one I tell my classes regularly—and Gloria Nimmer honored the victory by embroidering a pillow. On one side—the side that used to face outward in the Nimmer living room—the pillow quoted Justice Harlan's epigram: "One man's vulgarity is another's lyric." On the other side, of course, the pillow quoted Cohen's lyric.

The victory thus honored was not just a personal triumph—although Mel never feigned indifference to that aspect of the case. *Cohen* was a notable victory for the freedom of speech. From that decision forward the Supreme Court has recognized that the First Amendment protects more than civic deliberation, more than civil debate. Today the First Amendment extends its embrace to novel—emotional, uncivil, even raucous—modes of expression and to ideas that the conventional wisdom calls Unreason. In short, the First Amendment serves the cultural outsiders who challenge orthodox definitions of Reason and common sense. If the First Amendment today is an essential bulwark for the Constitution's commitment to tolerance in a society of many cultures, *Cohen v. California* is one of that bulwark's foundation stones.

Only once were Mel and I co-counsel in a litigated case. Our law school's student body president was charged with blocking a Beverly Hills sidewalk without a permit. His instrument for this alleged crime was a card table; he had sought to register voters for the Peace and Freedom Party. Now, this was no *Cohen v. California*; it was an easy

1. 403 U.S. 15 (1971).

case, and it made no history at all. Still, Mel and I had fun. In a thirty-three-page brief we wheeled up the First Amendment's heavy artillery and pointed it at the City. Then we offered an olive branch. We suggested that the municipal court could avoid the constitutional issue by limiting the ordinance to its obvious purpose: requiring permits for construction projects that blocked sidewalks. At the oral argument, the judge's laughter expressed not only his amusement but his sense of relief.

In matters large and small, in court and in the classroom, Mel taught not only by precept but by example. If his copyright treatise was at once magisterial and encyclopedic, his day-to-day teaching of classes in Entertainment Law and other subjects was prepared and executed with equal care. Not just the *Cohen* case but the Beverly Hills case, too, displayed Mel's grasp of the larger theories behind the issues—and also received the meticulous attention to detail that is the hallmark of the craftsman-at-law.

The *UCLA Entertainment Law Review* aims to present to the profession works of scholarship that will illuminate a particular field. The field is mainly identified, not by a separate body of legal doctrine, but by a focal point of law practice and a corps of law practitioners. Mel Nimmer would be—I daresay, is—ready to celebrate the launching of this journal, as anyone would celebrate the launching of a ship. May his spirit bless this vessel and all who sail in it.