

INTRODUCTION OF ARTHUR MILLER

DANIELLE KANTOR

Thank you so much. I'd like to take just a moment and thank Dean Revesz, Paul O'Grady, Krista Minter, David Mora, Trish Mc-Nicholas, and all of the administrators and staff who helped plan and execute this event. I would of course also like to thank the dedicators, and members of the audience who have come from far and wide to join us for such a wonderful occasion.

The *NYU Annual Survey of American Law* is the second-oldest journal at the Law School, originally run by members of the faculty as a reference for contemporary developments in the law. Now, the *Annual Survey* continues that legacy as a quarterly publication, remaining faithful to its original mission of exploring emerging trends in American law.

Since the journal's inception in 1942, the *Annual Survey* has dedicated each year's volume to honor one jurist, scholar, or practitioner's contributions to American law. In the past, the journal has dedicated volumes to Supreme Court Justices, Presidents, and cutting-edge practitioners. In fact, two of the dedicators now sitting on the stage—Justice Ginsburg and President Sexton—are past recipients of this honor. It gives me tremendous pleasure to be here today to dedicate the 67th volume of the *NYU Annual Survey of American Law* to NYU's own Professor Arthur Miller.

There are few individuals whose contributions to the law so faithfully embody the mission of our journal, to explore and explain novel developments in American jurisprudence. Other speakers, I'm sure, will discuss Professor Miller's many and varied achievements: co-authoring the multi-volume civil procedure treatise used by nearly all litigators and jurists; working as a reporter for the Federal Rules of Civil Procedure, which govern the way in which civil justice is dispensed; and, of course, his time as a television persona, in which he greatly expanded public understanding of the law.

It's hard to overstate Professor Miller's renown in the legal world. He is a true legal celebrity, mentioned on Page 6 alongside actors and actresses spotted on New York City streets. In fact, I feel fairly confident in saying that Professor Miller might be the only law professor—or person of any profession—in the history of Page 6 to be written up for simply being seen buying a fountain pen.

Yet, perhaps Professor Miller's greatest contribution to the law is the profound effect he has had on several decades of frequently terrified first year law students. I remember quite clearly the day Professor Miller called on me in civil procedure just a few years ago. The case was *International Shoe*.¹

I was in the midst of opening my textbook when I heard him call my name. I looked up and there he stood, red tie and pocket square mere inches from my face, coffee in hand. He pointed to some impossibly complex diagram on the board and asked me a question relating to it. My classmates looked at me with something like pity. Yet, I survived, and even went on to serve as one of Professor Miller's Research Assistants and, later, Teaching Assistants.

Everyone who has taken one of Professor Miller's classes remembers the experience. Whether Professor Miller taught *Erie R. Co. v. Tompkins*² dressed in a toga, or as Darth Vader, or even in drag, his students remember their particular rendition of the now-famous, "Erie Day." He goes the extra distance to turn a class that could potentially be about tedious, dry rules into a course about how civil procedure can be used as a vehicle to regulate access to the courts; and by which we as lawyers can fashion our adversarial system into an instrument of civil justice. He teaches all his students about the power of procedure, reminding us from time to time that, given a single procedural issue, he could handily defeat even the most compelling substantive claim.

This effort is clearly appreciated by the many former students, Research Assistants, and colleagues who have traveled considerable distances to be with us today. It has also been remarked upon many times in the emails, letters, and phone calls from former students and colleagues whose work prevents them from attending today. Congressman Barney Frank, for example, wrote:

I am a great fan of Arthur Miller, and I have enjoyed my association with him that began when I was an older than usual first year student in his civil procedure class at Harvard in 1974 . . . I would have very much liked to be able to join that great panel you have paying a tribute to a man of extraordinary intellect, humor, humanity, with a great gift for friendship.

Though we are here to celebrate Professor Miller's contributions to the law, we are also deeply honored to do so. We are incredibly excited to begin the Dedication of the 67th volume of the *NYU Annual Survey of American Law* to you, Professor Arthur Miller.

1. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

2. 304 U.S. 64 (1938).

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On behalf of the *NYU Annual Survey of American Law*, we would like to formally dedicate our 67th volume to you, in honor of your contributions to American law.

DANIELLE KANTOR
Editor-in-Chief
NYU Annual Survey of American Law

ACKNOWLEDGMENT

ARTHUR R. MILLER

It's hard to sit through that, even if you're out there or especially if you're out there. I'm filled with all sorts of emotions, as it would be very hard for someone who has just heard these wonderful people not to be filled with emotions. But mostly, it's one of gratitude. Gratitude to the *Annual Survey* for this afternoon, my gratitude to Danielle, the wondrous leader of the *Annual Survey*, for rigging the election. And my gratitude to Dean Revesz, for not vetoing the choice. Gratitude to the speakers.

But I got to tell you, I don't recognize myself. All this talk about a red tie and a pocket square, what are they talking about? And David, when I showed up at the Harvard Law Review in '56, I didn't even own a suit. I didn't acquire a vest for years. For years! I've heard events that I never even knew occurred. Footnote to Justice Ginsburg, and needless to say the last time I saw the Justice, I was sitting at counsel table, looking up at her, scared out of my mind. When she joined the Harvard Law Review in the fall of '57 as a second year student, her wonderful husband Martin being a classmate of mine, she made an immediate impression of seriousness, and talent, and skill. But as the Articles Editor occupying the front office of the law review building, it fell to me to babysit Janey, who was then what? 16 months or 22 months? So we had to watch Janey crawling around on the floor. And I'll tell you one of the great shocks of my life was being told one day that Janey was in my class. There seems to be an undistributed middle there, somewhere, but there she was.

So there's been a lot of lying, and there's been a lot of fibbing up here, and if I didn't know better, I'd think I had just heard a bunch of Sarah Palin speeches. Now it's possible that my mother might have believed some of these things. But even there I have doubts, because you see, my mother actually wished, repeatedly wished, that I go to work for my brilliant cousin Arnold, in the toy business in Hartford. You out there, Arnold? Take your damned toys and . . . !

I'm honored, I'm humbled. I might say I'm speechless, but nobody would believe that. The event has made me reflective, it has to. And like any other person, I've had my disappointments. A kid growing up in Brooklyn, obviously I wanted to play centerfield for the Yankees. It's true I've had some magnificent students: a Chief

Justice of the United States, a former governor of this State, a senator, Barney Frank. But do you know how demeaning it is to be working for one of your students? To have him as your boss? I never got to anchor *GMA* when David Hartman left; they gave it to Charlie. I could never take over *Jeopardy*; Alex Trebek goes on endlessly. Jeff Toobin—he put me out to pasture. But I’m so proud, so happy, that you have maintained the quality of reportage and description that I think is second to none. Because of my parochial being, I wish you hadn’t branched out of law, but I obviously wish you well. I do have this fear, you referred to it, that people blame me for Nancy Grace. But I always say to myself, you are my saving grace. And I wish you well, forever.

I’ve been lucky, I’ve been very lucky. I believe in serendipity. I don’t believe in planning; I’m a disorganized person. I pick up the telephone on the theory that the next call can change your life—and it has, on three or four different occasions. I’ve been graced and helped by wonderful, wonderful mentors. Two of them have been named. Benjamin Kaplan, my sort of God in terms of the law. Fred Friendly, my television God. But Jack Weinstein hasn’t been mentioned. I got to know Jack when I was doing that project on international procedure that the Justice mentioned. Jack was one of the advisors. We put together the International and Interstate Procedure Act, we hocked it around the country and played with Federal Rules. And serendipity, serendipity—because of a great sadness in terms of the death of one of his co-authors, he asked me to join him on Weinstein, Korn and Miller.¹ That was about 1961, Jack. That’s almost 50 years ago. I’m still writing these god-damned treatises!

I’m a bit of a Jekyll and Hyde, I really am. You know when I was in law school, I was quiet as a church mouse; I really was. John said he only spoke once in his years at law school. I only spoke once. Ben Kaplan called on me one day in first year procedure, posed a hypothetical about a New Yorker wanting to sue a Californian. And the question was, “Where should the lawsuit be?” So I said, “Iowa.” It seemed to me fair at the time. And again I’ve been lucky because after law school, after a couple of years at Cleary Gottlieb in New York, a great law firm, when Henry Friendly was still there, and Leo Gottlieb was still there, Jerry Hyman is out there somewhere, he was a senior associate at the time, Dick Holbert may be out there. Learned a lot. But it wasn’t until I started teaching; I guess I’m just

1. JACK B. WEINSTEIN, HAROLD L. KORN & ARTHUR R. MILLER, *NEW YORK CIVIL PRACTICE: CPLR* (2d ed. 2005).

a late bloomer. It wasn't until I started teaching at Columbia, part of the deal of my going up there and running this project as an assistant to Hans Smit, was that they would give me a teaching experience because they knew I was interested in teaching. And Columbia was weird then, as it is today, and they took their first-year course, and they divided it into three parts with three different teachers. There was Jack Weinstein at the front, Paul Hayes in the middle, and Maurice Rosenberg at the back. Three *great* proceduralists. Well, Paul Hayes was appointed to the Second Circuit, so they decided to throw me into the unit that Paul would have taught. So I had to follow Jack. Jack was well known for his capacity to walk on water at the time. I'm coming in after Jack, scared to death, scared to death. So what do you do with fear? Do you succumb to it? No. You—at least I—try to overpower it. So I prepared and prepared and prepared and prepared. I sort of wound myself up like a top, enormous winding. And I went into this class of about 160 in those days, and unsprung, I leaped! And instantly was born this horrific person they have been describing for two hours. And that's the Hyde side of me.

I've had great colleagues like Dave Shapiro, wondrous proceduralist. Great deans, including Ricky, who I think will be my last dean. Do you like that notion? You're my last dean. But this is not my valedictory. And I have to instruct every 2L in the room, and you 1Ls who may be in here, don't you dare tell the incoming students next August that I'm compassionate, or feeling, or a pussycat. Because that will only drive me to become my infuriating self once again. Once again, speakers, thank you for lying as you have, and thank you all for taking the time to be here.

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