

TRIBUTE TO ARTHUR MILLER

HON. RUTH BADER GINSBURG

In classrooms and courts, in the print and broadcast media, Arthur Miller has graced the stages of our profession with enormous intelligence and inimitable style. Applause to the *Annual Survey* editors for dedicating the 2010 volume to this grand master of the art of law teaching. May I lead the chorus of all gathered here in a rousing “Bravo, Arthur” for his constantly captivating shows.

I first encountered Arthur in days when we were rather young. The year was 1957, Arthur was Articles Editor of the *Harvard Law Review*, I was a 2L and a novice on the *Review*. Many of the best and brightest composing the *Review*’s officer ranks had an apparent self appreciation, sometimes bordering on arrogance. Arthur was of a different breed. He was wise beyond his years, but also caring, and a wee bit shy, would you believe. His kindness helped me and my classmates gain confidence in our ability to contribute usefully to the enterprise.

As a bridge from Wall Street practice to law teaching, Arthur became, in 1961, Associate Director of Columbia Law School’s International Procedure Project. I was on the Project’s staff, and succeeded to his post when he joined the Minnesota law faculty in 1962. Arthur understood from that experience, as I did, that comparative sideglances betray no lack of patriotism. Quite the opposite. They can deepen our comprehension of our own legal systems, and make us better able to advance the rule of law in our world.¹

Moving from Minnesota to Michigan, Arthur joined University of Texas star, Charles Alan Wright, to produce, over decades of prodigious effort, the monumental treatise, *Federal Practice and Procedure*.² A necessary part of the library of every federal judge, federal court practitioner, and civil procedure teacher, the now thirty-five plus volume set garnered rave reviews from the start. The work, users found, is “easily understandable,” yet “richly intellectual,” and “admirably successful in separating critical commentary from de-

1. See, e.g., AM. SOC’Y OF INT’L LAW, “A DECENT RESPECT TO THE OPINIONS OF MANKIND . . .”: SELECTED SPEECHES BY JUSTICES OF THE U. S. SUPREME COURT ON FOREIGN AND INTERNATIONAL LAW (Christopher J. Borgen ed., 2007); Ruth Bader Ginsburg, *A Decent Respect to the Opinions of [Human]kind: The Value of a Comparative Perspective in Constitutional Adjudication*, 64 CAMBRIDGE L.J. 575 (2005).

2. The most current version is CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, *FEDERAL PRACTICE AND PROCEDURE* (3d ed. 1998).

scriptive narrative.”³ Almost daily, someone in my chambers—often, me—consults Wright & Miller. We simply could not do without it.

In his Michigan years, Arthur saw, much earlier than most in the academy, the potential of electronic communication for good and for ill. Enlightening all of us, he produced, in 1971, *The Assault on Privacy: Computers, Data Banks, and Dossiers*,⁴ the first book to explore the privacy intrusions made possible by modern information technology.

In small time, it is not possible to survey the vast body of Arthur’s books and articles. But I must speak, particularly, of one other volume. As a procedure teacher in the 1960s and 1970s, I was a regular user of *Civil Procedure*,⁵ a great teaching tool first published in 1968 by Arthur and co-authors John J. Cound and Jack Friedenthal. The work was of such excellence, I continued to use it when I moved from Rutgers to Columbia in 1972, in preference to the “house book” co-authored by my Columbia colleagues. Many editions later, and with co-authors John E. Sexton and Helen Hershkoff joining Jack Friedenthal and Arthur, the book continues to engage both teachers and students. As one reviewer wrote of the first edition, the book presents in careful balance “case law, practical queries into strategy and tactics, incisive probings into the heart of procedural theory, and a continuing awareness that the study of civil procedure is as much the study of societal policy as any substantive law course.”⁶

During Arthur’s tenure at Harvard, his teaching audience included the judges he regularly lectured in Federal Judicial Center programs and at Circuit conferences, particularly on the management of complex litigation. Most notably, he added TV performances to his repertoire. In addition to his own PBS show, *Miller’s Court*, he was, for over 20 years, legal editor and commentator for ABC’s *Good Morning, America*. He was a skilled interlocutor in many of the televised colloquies inspired by Fred Friendly. For one program in that format, *The Constitution: That Delicate Balance*, Arthur garnered an Emmy Award. Three times, the American Bar Association honored him with its Gavel Award, for promoting public understanding of the law.

3. Frank & Schroeder, Book Review, 87 Harv. L. Rev. 315, 316, 320 (1973).

4. ARTHUR MILLER, *THE ASSAULT ON PRIVACY: COMPUTERS, DATA BANKS, AND DOSSIERS* (1971).

5. JOHN J. COUND, JACK H. FRIEDENTHAL & ARTHUR R. MILLER, *CIVIL PROCEDURE* (1968).

6. Ralph J. Rohner, Book Review, 21 J. LEGAL EDUC., 363, 366 (1969).

As Reporter to the U. S. Judicial Conference Advisory Committee on Civil Rules, Arthur contributed vitally to keeping the Rules in line with evolving needs and practices. I was an adviser to the American Law Institute's Complex Litigation Project, which Arthur headed as Reporter. In the years that Project consumed, I personally witnessed Arthur's sparkling presentations to the advisory group and the ALI Council.

Of Arthur's diverse life outside classrooms, courtrooms, and TV stages, I will mention two of his particular passions. For over thirty years, Arthur has been an avid collector of Japanese artist Kuniyoshi's prints. Last year, the Royal Academy of Arts in London mounted an exhibition of the artist's early to mid-19th century works. The show drew largely from Arthur's collection of nearly 2000 prints. Arthur described Kuniyoshi as an "over-the-top, exuberantly imaginative artist."⁷ Sounds familiar? The description fits the collector himself to a T, don't you agree.

Of late, Arthur has added philanthropy to his avocations. As an undergraduate at the University of Rochester, Arthur majored in history, a field still at the top of his reading choices. Last year, he endowed a chair in history at his Alma Mater, his way of saying thank you for courses and professors he so thoroughly enjoyed.

Arthur's appreciative students include my daughter, Jane C. Ginsburg, who attended Harvard Law School 1977-80, and had the good fortune to be assigned to Arthur's first year Civil Procedure class. With no particular specialty attracting her interest, Jane decided, in her upper class years, to pick the best professors, whatever the course they might teach. She enrolled in Arthur's Copyright course, a choice that determined her life's work. Arthur served as post-graduation career counselor to Jane, who is today the Morton L. Janklow Professor of Literary and Artistic Property Law at Columbia.

Arthur, too, had a favorite professor in his law student years, Benjamin Kaplan, superb teacher of Civil Procedure and Copyright. Just as Ben's teaching influenced Arthur, so Arthur made the law in those fields magnetic for Jane and countless others in his classes.

Students in Arthur's Civil Procedure class came to expect an exotic performance on *Erie* day, the day the class first took up the Supreme Court's transcendently important decision in *Erie Rail-*

7. Lubow, *Everything But the Robots; A Kuniyoshi retrospective reveals the roots of manga*, New York, Mar. 15-22, 2010, p. 109.

road v. Tompkins.⁸ One year Arthur portrayed Sylvester Stallone, another year, John Travolta. In Jane's year, *Erie* day was conducted by D'Arthur Vader. For all the hijinks, students came away with a solid grasp on the case.

One of my current law clerks experienced Arthur, The Teacher nonpareil, and wrote this recollection for me to convey to you:

On our first day of Civil Procedure (in our first semester of law school), Miller exhorted a startled 1L, "Give me *International Shoe* in six words!" The student floundered, as did all who followed, but by the end of class, he had pulled the magic words out of us collectively: "minimum contacts," "fair play," and "substantial justice."⁹ The lesson, of course, was twofold—we learned the canonical constitutional test for personal jurisdiction, but also how to distill a case to its essence.

That comment is representative of generations of students introduced to the law in Arthur's memorably engaging, eye- and mind-opening way. For many years more, Arthur, may there be encores by the score.

RUTH BADER GINSBURG
Associate Justice
Supreme Court of the United States

8. 304 U.S. 64 (1938).

9. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

TRIBUTE TO ARTHUR MILLER

JOHN SEXTON

So I think I am here in the role of the President of New York University. Justice Ginsburg's colleague, Stephen Breyer, once said to me that when you move into such a position, sometimes you have to perform the "blessing function." So consider this event blessed.

However, it's impossible for me to remain in that simple role today. After the tour de force that we've just heard from Justice Ginsburg, it's hard to imagine that there's much else to be said, but the fact of the matter is that Arthur Miller—like life—is best viewed not through a single window, but through the many facets of a diamond, and you will see as we proceed through the speakers that this special man has many, many sides that even those who feel they know him best cannot imagine.

So I will move out of the blessing role and into the personal role. Like Linda Silberman, my professional sister through Arthur, I was Arthur's student. In a profound way, I can say that Arthur's class literally changed my life, and changed it not simply in the professional dimension, but in the most personal of ways.

First, I should say to you that our class, our section, was the section about which Scott Turow wrote his book *One L*.¹ I'm not in the book. Arthur might say he's not in the book, but I've got news for you: he is. But when I say he changed my life in profound ways the plural is important. He, of course, caused me to teach what I teach; he became my mentor and later he made me his (very junior) co-author. But even more important, he changed the most personal and important dimensions of my life. I had arrived in Harvard Law School as the single parent of a six-year-old, and it was in Harvard's first class for me, Arthur's Civil Procedure class, that I saw Lisa Ellen Goldberg and fell in love immediately.

That first class was very interesting. I was, I think, Arthur's oldest student; I certainly was older than Barney Frank when Barney took Arthur's course. I was 33; I'd been a tenured professor; I'd been a good teacher. But I was at the Harvard Law School and I'd been told by a friend who was on the faculty there that I was blessed to have one of the great teachers if not the greatest teacher at the

1. SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* (1977).

school as my Civil Procedure teacher. So, from the first minute, I watched his every move.

On the first day, he walked into class, immaculately dressed as he always is, and announced to us that there were rules in the class. This was Civil Procedure, there were going to be rules. And one of the rules was that you came to class prepared. He had never heard the word “unprepared,” he said, and he was not going to hear it from us. He had never heard the word “pass” and he was not going to hear that from us either. He went on to tell us that if we were unable to get the work done, we could go to his secretary and tell her, “I’m not prepared today,” and that, if we did so, he wouldn’t call on you. But, he continued, if you didn’t follow that rule: the sentence stopped. Because there’d never been anyone that hadn’t followed the rule.

It was about, I’d say, two months into the term that a person that by that time had become a good friend of mine sat down next to me outside of class. He was a married man with two children who was putting himself through law school as a resident counselor in a home for troubled children. “You know, John, I didn’t get the cases done for procedure today,” he said, “one of the kids had a tough time last night, I was up all night.” I said, “Well, go tell Arthur’s secretary.” He said, “No, no.” It’s amazing how many people didn’t go tell the secretary—they somehow thought that there would be a penalty if they admitted they were unprepared. About ten minutes later, when Arthur walked into class, I was perched on a seat that offered a good view of Lisa Goldberg, and, as it turned out, also of my unprepared friend. Arthur spun, pointed right at him and said: “State the case.” I was the only person in that room other than my friend who knew that we had come to a critical moment. My friend looked at Arthur and said, “Professor Miller, I’m unprepared.”

At this point, I was watching Arthur, and I have to tell you, Ladies and Gentlemen, this was the only time in his life that Arthur Miller was unprepared. He did not know what to do. His lip was quivering as much as my friend’s was; there was a silence that I counted as a full ten until my friend made the mistake that made Scott Turow a best-selling author. “Let me explain,” he said. And Arthur cut him off and said, “There is no explanation,” and proceeded—quite inappropriately, in my view—to call on the person sitting next to him and stay with that person for the next fifteen minutes so that the eyes of the whole class—at least their peripheral vision—remained on my friend.

When Arthur left the room at the end of that class, Lisa Goldberg bolted to the front of the room and said: “I have never

2011]

SEXTON TRIBUTE

7

been so embarrassed for my peers or myself. We have just been infantilized! This is outrageous! We should demand this man's resignation from the faculty." She passed around a petition which, once signed by dozens, she presented to Arthur in his office.

Four months later, I was fully aware of my love for Lisa, but too embarrassed to tell her. Simply put, I knew she was way above my head. One day, Arthur Miller walked into class, spun around, and said, "Mr. Sexton, state the case." I was prepared. He stayed with me for the entire hour. I have never been grilled that way in my life. Whether you believe it or not, Ladies and Gentlemen, it was the only time I spoke in the three years of law school. It was a memorable day in our class.

Afterwards, as I came out of the zone (almost unconsciousness) in which I had been operating during class, a zone in which I actually engaged Arthur in repartee as well as intellectual discussion, each of us cutting the other as if I were dealing with one of my cousins at the dinner table, people came up to me and pumped me on the back and said, "Boy, you really stuck it to him, you really stuck it to him!" And I began to realize that was the last thing I wanted to do.

Later that day, I got to my mailbox and there was a note in the mailbox: "Please see Arthur Miller." I remember walking into his office and seeing his eyes rising as he said: "You know, I understand you're interested in law teaching." I said, "Yes." And he said, "Well, I want you to know I came to class in a bad mood today, but I've never enjoyed a class as much as this class today. And when the time comes, I'd like to write you a letter of recommendation."

About a month later, I finally got up the courage to tell Lisa I loved her; and, miraculously, she said she felt the same way about me. Sadly, however, it turned out that Arthur Miller had gotten her (the woman who had petitioned for his removal) a job in Chicago at the Sonnenschein law firm. He had shown her that even when you disagree vehemently, professionals don't personalize it; he had written her a letter of recommendation.

When my protestation of love turned to success, and we were married two months later, we wrote a note to Arthur, and we said, "We thought you might be interested that two people in your civil procedure class fell in love and married each other." We got a note back from him: "When you get back, I want to take you to dinner to celebrate this." And at dinner at the Ritz Hotel, just the three of us, he said to me: "Are you still interested in teaching?" And I said, "Yes." And he said: "I have to go to India for some telecasts in April. How about you taking over my Civil Procedure class for two weeks

in April?" He took a chance on a second-year law student and allowed me to take over his Civil Procedure class, a class in which I taught people like Jane Ginsberg and Harold Koh, here today to celebrate Arthur. And a few months later, he engineered a dinner with his former student, Linda Silberman, and I began to discuss a teaching position at NYU.

Arthur Miller changed my life. Everything about it. This man is a mentor, he's a friend, he's transformative in every way. Most of all he's a man I love. And I'm just so happy he's part of our University today so that he connects to every part of my life. Arthur, you're wonderful. Thank you very, very much for being here.

JOHN SEXTON

President, New York University;
Dean Emeritus and Benjamin F. Butler Professor of Law
New York University School of Law

TRIBUTE TO ARTHUR MILLER

BRAD N. FRIEDMAN

What a tremendous honor and privilege it is for me, both personally and professionally, to pay tribute to Professor Arthur Miller, who always insists on being called “Arthur,” and who is, I think *unquestionably, the* greatest legal giant of our time. And I say that with all due respect to all of the other legal giants with whom I am also honored and privileged to share this stage.

In puzzling out why I’ve been asked to join this august group, it strikes me that, unlike many of the rest of those who are here, I work with Arthur not so much in his academic, television, or public speaking lives, or as a judge hearing arguments, but rather, I’ve mostly come to know Arthur in the everyday legal trenches where cases are formulated, complaints are drafted, briefs are written, and cases are won or lost. And so I want to share with you a small window into Arthur’s additional life, as a highly successful practicing lawyer.

But first I also want to tell you a little bit about how I came to know Arthur.

As a law student at NYU, I got to attend only one Arthur Miller civil procedure lecture, when my own rather accomplished professor, John Sexton, persuaded Arthur to give a guest lecture. That was the first time I ever saw the author of *Wright & Miller* in person, and even after John’s huge build-up, that lecture—on Rule 23—exceeded all expectations, and my own work in the class action field can in many ways be traced to it.

In any event, about a year after graduating from law school I got married and moved to a condominium complex in New Jersey, and when the weather was good, my wife and I liked to spend weekends relaxing by the pool and playing tennis. Except that most weekends I got so caught up watching Arthur’s *Fred Friendly* series, that my wife literally could not pry me away from the TV set, and would leave the house without me, in total bewilderment as to why I would want to be inside watching television. For those of you who missed these TV programs, I urge you to find them. They were *terrific*.

I joined my current firm about seven years later, and learned on my first day that the firm frequently worked with Arthur Miller, and that Arthur was in talks to become “Special Counsel” to the firm. What I didn’t know was that those talks had been ongoing for

years, and would continue for another fourteen years before Arthur finally decided to make his relationship with the firm official.

My first assignment at the firm required me to write a somewhat difficult response to an interlocutory appeal, and I was told to send the first draft to Arthur for review, which was really pretty scary since I didn't yet know Arthur and so didn't yet know how great he is to work with; all I knew was John Sexton's stories about what it was like when John worked for Arthur at Harvard, which somehow left me feeling more than just a little inadequate.

We ultimately worked very closely together on the brief in that case, which I think was the only case of its type to ultimately be successful. And make no mistake: Arthur's comments and ideas were the thing that made the difference in that case.

My absolute favorite experience, though, happened about a year later.

I had been working on a federal securities class action against the officers and directors of a life insurance company, when a *state* court judge presiding over the company's *state* court reorganization, purported to enjoin our clients from pursuing their *federal* causes of action in *federal* court.

The firm asked Arthur to get involved and to argue the appeal, and since it was my case, it was up to me to work with Arthur and to help him prepare for the argument.

Our clients had purchased three different types of financial instruments, including something called a "GIC." It wasn't really necessary for Arthur to know anything about the GICs, but Arthur is utterly thorough in his preparation, and so still wanted a full tutorial on the GICs, which I convinced him wasn't necessary and which I never provided.

So of course, the GICs ended up being the centerpiece of our opponents' argument. You can imagine Arthur's look of . . . consternation . . . as he stood up on reply, and proceeded to give one of the most brilliant arguments that I've ever heard, based entirely on the relevant attributes of the GICs.

And here's the funny part, where you really have to picture Arthur in your mind. After the argument ended, and after the panel told us what an honor it was to have Arthur in the courtroom and how brilliant the arguments were, and after several moments of utter silence in the cab while we all caught our breath and Arthur just sort of ruminated, Arthur looked up from the back seat and told me he had just one question: "Will you *please* tell me, just what the *hell* is a GIC?"

A quick additional aside about Arthur's modesty. On that same trip, the woman in charge of the lounge where we were preparing came over to Arthur and insisted that she knew him from someplace. Arthur told her that he didn't think they'd ever met, at which point she said, breathlessly, "I know who you are, you're Arthur *Murray!*" Arthur just smiled and told her that no, he wasn't Arthur Murray, and in fact, he didn't even dance very well.

Since that time, it's been my enormous privilege to work with Arthur on countless cases and potential cases, including most recently a Second Circuit argument where the Second Circuit ruled our way on absolutely everything that Arthur argued, but reversed on the one issue the panel told both parties not to bother arguing. Although I'd like to think that the Court wasn't ducking him, it has occurred to me that perhaps the reason that the panel instructed Arthur not to argue that point was that they didn't want him to change their minds.

Of course, beyond these everyday cases, Arthur also argues before the Supreme Court, and I would be remiss if I didn't at least mention his recent success there in the *Tellabs* case,¹ which we all like to say that Arthur won by a vote of 1–8, because even though the Court vacated the ruling we won below, the standard that the Court announced, in a majority opinion authored by Justice Ginsburg, was one that we were all quite pleased with, and in fact the *Tellabs* case is still alive in the lower courts today.

To give you just some idea of the great respect that Arthur commands at the Supreme Court—where some of the Justices are his former students—I'd like to read to you from just a portion of the transcript of the *Tellabs* oral argument.

Justice Stevens wanted numbers to help him understand what level of certainty Congress meant when it used the words "strong inference" in the PSLRA, and asked Arthur: "[D]o you think you can categorize the strength in percentage terms?"

Arthur responded that he "ha[dn't] seen a judicial opinion that says at the 33 and one-third percentage of probability, I've got to give it to the jury."

At that point Justice Scalia interrupted, and said that no, he thought it was "66 and two-thirds."

Whereupon, and without missing a beat, Arthur asked: "Is that because you never met a plaintiff you really liked?" If you think about it, that was really a brilliant response, and not one that many of us could get away with.

1. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007).

Plus, a moment later Arthur also showed he could be self-deprecating. After Justice Roberts questioned Arthur's use of the word "okay," Arthur responded: "No, I did not mean that. *Don't* take me literally on that. For heaven's sakes, I'm from *Brooklyn*."

I'll conclude by reiterating what a personal and professional thrill it has been for me to work with and get to know and enjoy Arthur over these past fifteen or so years, whether it's been brainstorming over a case or a point of law, or just shooting the breeze. It is these opportunities that keep me going whenever I get down or depressed. Because as a lawyer, and as a human being, there is nothing more satisfying or enjoyable than spending time with the man who I am just so blessed, and privileged, and honored, to be able call my friend, Arthur Miller.

BRAD N. FRIEDMAN
Partner
Millberg LLP

TRIBUTE TO ARTHUR MILLER

JUDGE ROBERT D. SACK

The older I get the more grateful I become for the opportunity to rise to say a few words about someone who is still alive.

Indeed, being the anxious sort, I confess that it occurred to me that if, God forbid, something dreadful happened to Arthur between my writing and giving of these remarks, all I would have to do is change “is” to “was,” and I’d be all set.

But anxious is the word. About a month ago, I was visiting with former law clerks in Washington. Chatting with a clerk’s wife, I mentioned the tribute to Arthur this afternoon. “I’m terrified!” I confided. “Terrified of the tribute or of Arthur Miller?” she asked. “Of the tribute,” I said. “Arthur is a pussycat.”

I have been worried. Not so much about the prominence of the audience, or the responsibility to do right by Arthur. But because this is a particularly difficult assignment. Because Arthur is a particularly difficult subject.

Consider. Arthur is a public man. Heads turn when you walk down the street with him. He remains perhaps the most publicly recognizable law professor in America—a profession whose members are not exactly known for their reticence. (Eat your heart out Alan Dershowitz.)

But he is at the same time a jealous guardian of his own privacy—a field of law in which he maintains, not coincidentally I think, an avid interest. You may know a lot about how Arthur thinks and feels, but only so much, I suspect, as he wants you to know.

I therefore find myself on the horns of a pickle, to mix a metaphor. Even after having known Arthur for a third of a century, and counting myself as a friend, if I were to tell you something about the public Arthur Miller, it would be something you already know. But if I were to tell you something about the truly private Arthur Miller—I’d be making it up.

So I’ve decided to do this. I’m going to explain to you, through a single story, why Arthur wears a big, colorful handkerchief in his breast pocket. Maybe that’s something sort of public about Arthur that you don’t know.

I first met Arthur in connection with the Ford Foundation seminars on media and the law, later better and more appropriately known as the *Fred Friendly Seminars*. For a long time, Fred relied on

three principal so-called “moderators”—although the word “inquisitor” was far closer to the truth. In addition to Arthur, there was Charlie Nesson, also of Harvard, and Benno Schmidt, then of Columbia Law School. As a lawyer for the Wall Street Journal, I became one of their go-to panelists—at least when Floyd Abrams was unavailable. In a score of venues across the country, sitting somewhere around the U-shaped table, I got to answer Arthur’s tough, searching, no-holds-barred questions, most memorably and repeatedly: “Mr. Sack. You don’t actually get paid for giving advice like that, do you?”

To my recollection, over the years, the law and media seminars had three basic incarnations. The first was as a confidential, unfettered exchange of personal views among lawyers, judges and journalists. Fred would explain that he wasn’t going to put a gag order on anyone, but he expected that, to facilitate candid conversation, what went on in that room would stay among its participants and invited guests.

Something happened. It eventually became apparent that the seminars were great television, and Fred Friendly was a television man. So in due course the closed door learning sessions morphed into nationally televised teaching sessions.

But in between, Fred had a different idea. Fred and the trinity of Miller, Nesson and Schmidt, would teach local counsel to run sessions in and for their own communities. If I remember right, that wasn’t such a hot idea. If you think that Arthur can teach a run of the mine lawyer, such as me for example, to be Arthur, then you’d think that Derek Jeter can teach me to go to my right.

In any event, in that pursuit, in the mid to late 1970s, Fred and Arthur and some others went off to Chicago to hold a demonstration session for lawyers, who were, thereafter, to go forth and be Socratic. The venue I remember to be a massive, ornate indoor theater-in-the-round at Northwestern University Law School.

At a cocktail party the night before, a lawyer from Tennessee, I think it was, was boasting that the hypothetical for his panel the following day wasn’t that hard, and that he had it solved. As my father used to say, “Let him not boasteth who buckleth on the sword like he who taketh it off.”

For the next day came. And the lawyer was seated in the middle of the U-shaped table. And Arthur—thirty some-odd years leaner and meaner—was the inquisitor. And sure enough, using that hypothetical—forefinger preceding him—he began to ask questions of our Tennessee friend.

2011]

SACK TRIBUTE

15

It became quickly apparent that the guy's answers weren't quite as clever as he had thought. He was lost. And Arthur moved in.

Question by question, Arthur pushed him closer and closer to the edge. And maybe it was my imagination, but it seemed to me that the theater had become the Coliseum, and the spectators were rooting for the Lion—Arthur—and for blood.

It was plain that one more question from Arthur, and this fellow would be hurtled over the precipice—to his very public humiliation, if not his death. Just one more.

And Arthur stopped. And he asked: "Is that your view?"

And the lawyer confirmed that it was.

And Arthur said "Okay." And he moved on to something and someone else.

Maybe you had to be there. But that was an act of remarkable generosity. What Arthur simply would not do that morning, was to become a hero at the expense of a by-then rather pathetic man. And it said as much to me about Arthur as almost anything I have learned about him before or since.

Arthur, then, is a sheep in wolf's clothing; a man of kindness and heart. The word *mensch* does come to mind. So, as promised, I come to explain his omnipresent handkerchief. When Arthur's great heart is not out on his sleeve—I'm just sure of it—he hides it behind a swath of colored cloth neatly folded into in his breast pocket.

Congratulations, Arthur.

ROBERT D. SACK

Judge

United States Court of Appeals for the Second Circuit

TRIBUTE TO ARTHUR MILLER

HENRY B. GUTMAN

I confess that being up here today, in such distinguished company, I have the same feeling I did as a first year law student at Harvard where I met Arthur in the early 1970s, namely that my presence here must be some kind of a mistake. Now as then, I happily accept my undeserved good fortune. And I'd like to think that I'm here to represent Brooklyn and—Thank you. Brooklyn is in the house. I see the Eastern District right here—as well as the intellectual property side of Arthur's expertise. It's been my privilege to know Arthur for over thirty-five years as a teacher, a colleague, and now as a friend.

At Harvard in the seventies, as you've heard, Arthur was already a legend—not simply for his treatises, casebooks, and other scholarly works, but in particular for his teaching. The prescribed mode of instruction back then was the Socratic method. No one was better at it than Arthur. He may not have been the model for Professor Kingsfield, as some have speculated, in *The Paper Chase*,¹ because the dates just do not match up. Arthur is way too young to have been the model for that book. But as John Sexton said, he clearly was Professor Perini in Scott Turow's *One L*,² which was published when I was a law student.

Unfortunately, I was not in the lucky section that had Arthur for civil procedure, so I can't provide a first hand account of the *Erie* Day performance or describe his costume. There were rumors about cross-dressing, but I can't say. All I know is that the rest of us, the three-fourths of the class in other sections, knew we were missing something very special. But you didn't have to be in Arthur's class in order to know how he taught, because he took his teaching technique beyond the classroom walls, and he brought it to the world. Countless bar and professional groups and gatherings of judges have been treated to panel discussions run by Arthur and his patented teaching style. For decades every Harvard Law School reunion featured a program for which the formula was simple: one, pick a timely topic of interest; two, assemble a panel of experts from the reunion classes; and three, as the dean used to say, "Have Ar-

1. JOHN JAY OSBORNE, JR., *THE PAPER CHASE* (1970).

2. SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* (1977).

thur do his thing.” These performances became Arthur’s trademark as surely as the ubiquitous red tie and handkerchief and his three-piece suit.

My favorite example of Arthur doing his thing has been referenced by other speakers today. And I suspect it may be Arthur’s too. And that was the series of TV programs with Fred Friendly in the eighties. For those too young to have seen them or too old to remember, imagine—I’m in the latter class but I did look at them online the other day for a refresher—imagine a semi-circle of desks as in a law school classroom, but in the front row, instead of nervous students, you have senators and congressmen, justices and judges, cabinet secretaries, governors, scholars, distinguished lawyers, pundits, and even a former president of the United States. Arthur poses a hypothetical raising a great constitutional question of the day and then proceeds from panelist to panelist, asking questions, eliciting reactions, tweaking the hypothetical, and orchestrating a high-end debate in a format that any law student would instantly recognize. Much as I appreciate the efforts of CNN, ABC News and others, nothing on TV, in my view, in the last thirty years has come as close to realizing the potential of the medium to inform and enlighten as those programs with Fred Friendly did. That’s Arthur as the teacher.

A decade after I graduated, I got to know Arthur in a different capacity as a colleague. I was representing Lotus Development Corporation, a software company that was concerned about all the self-proclaimed clones of its best-selling spreadsheet program, Lotus 1-2-3. I was destined to spend the next ten years of my life litigating software copyright cases, culminating in the *Lotus v. Borland* case,³ which we argued before the Supreme Court in the midst of a record blizzard. The only problem was that I had never handled a copyright case before and lacked even the foresight to have taken the only copyright course offered at Harvard when I was a student—one semester every other year. But I did remember who taught that course, and I called Professor Miller in search of some post-graduate instruction.

Now Arthur’s accomplishments in the civil procedure field are so vast that many people are unaware of his equally distinguished record in copyright law, the expertise that gave Columbia and the copyright world Jane Ginsburg. But Arthur’s love of intellectual property and copyright in particular dates back to his days as a law student. His first assignment on the law review was to study the mag-

3. *Lotus Dev. Corp. v. Borland Int’l, Inc.*, 516 U.S. 233 (1996).

azine's copyright procedures to make sure they complied with the notice requirements of the 1909 statute. They didn't. His student note was on potential common law protection for unpatentable and uncopyrightable ideas. It took 50 years before that draft note finally became an article in the *Harvard Law Review*;⁴ because at the time it was first written, then Dean Griswold and the university had been sued by someone who claimed the dean had stolen his idea for a series of tax books. Not a good time to publish an article about protecting ideas.

It was then that Arthur began his relationship with his friend and mentor Ben Kaplan, who taught both procedure and copyright as Arthur someday would. Arthur spent his second law school summer as Kaplan's Research Assistant, later writing of that decision, quote, "I have sixty years to practice law and only one summer to work for Ben Kaplan." Well that turned out not to be true. Actually it turned out to be more than just one summer. What began that summer became a long-term collaboration. Professor, later Judge, Kaplan was a giant in copyright law. His book *An Unhurried View of Copyright* remains to this day one of the most thoughtful treatments of the subject. Together he and Arthur participated in the decades-long legislative process that culminated in enactment of the Copyright Act of 1976. On behalf of a consortium of universities, they argued to protect the academic community's use of technology, especially computers and databases, for research and teaching. To put all this in perspective, before the founders of Google had even been born, Arthur wrote in defense of a future in which a computerized, globally accessible library would make the world's collective knowledge available to all. Arthur turned down an opportunity to be register of copyrights. But when President Ford asked him to serve on the presidential commission known by the acronym CONTU,⁵ he agreed and he spent the next three years hearing testimony, reviewing submissions, and preparing the report that was to address the question of how the new copyright act should deal with computer software and databases.

So in short, when I needed a mentor to help me understand how to apply traditional copyright doctrine to the new digital works of authorship known as software, or as Arthur put it, to pour new wine into old bottles, wine being something Arthur also knows about, Arthur was the natural choice. What began with my stopping

4. Arthur R. Miller, *Common Law Protection for Products of the Mind: An "Idea" Whose Time Has Come*, 119 HARV. L. REV. 705 (2006).

5. The National Commission on New Technological Uses of Copyrighted Works.

by Arthur's office to pick his brains and drink his coffee, ripened into a professional partnership. When the First Circuit unexpectedly reversed our trial victory in *Lotus v. Borland*, we retained Arthur as co-counsel for the Supreme Court battle ahead. Now writing a brief with Arthur is a real treat. As in the classroom, he didn't preach. He prodded. A witty tongue in cheek note or a raised eyebrow usually did the trick. The word "really"—you can almost hear him saying it as you read it—written in the margin of a draft often followed by appropriate, but unnecessary, punctuations spoke volumes. And for you young law review editors wondering if the hours that you spend honing your technical cite-checking skills will ever be used after graduation, let me tell you, that after all of us were done proof-reading a brief the person who caught the last nit, the improperly italicized comma—I'm not kidding—was invariably Arthur.

Since then, Arthur and I have written an amicus brief together urging the Supreme Court to reverse the Second Circuit in the *Tasini* case.⁶ We only got two votes, but I'm still very proud of that brief. We've done copyright panel discussions together, and Arthur has been kind enough to invite me to participate in classes he taught on copyright and new technologies both at NYU and at Harvard. And most recently, Arthur helped our team prepare for the Supreme Court argument in *Reed Elsevier v. Muchnick*,⁷ a case decided in our favor earlier this term. The issue in the case was one of federal subject matter jurisdiction in a class action settlement of a copyright case—three of Arthur's legal specialties. All that was missing was privacy, and you would have had the whole shebang. Who better to turn to for advice than Arthur Miller?

Over these years as teacher, colleague, and mentor, Arthur has become a good friend. He is the person to whom the wine list should be passed at dinner, especially if budgetary constraints have been suspended for the evening. He is an enthusiastic companion at any sporting event featuring a New York team—Arthur, I actually had Yankees tickets this afternoon, but I thought we had to be here—particularly if it involves his beloved Yankees. And yes, Arthur has been known to dispense with the tie and vest at a ballgame. As you've heard, he is an avid collector of Japanese prints. His museum quality collection is now on display at the Japan Society—you should really get there and see it—after a successful museum exhibition in London last year. And in an age when most of our words

6. *N.Y. Times Co. v. Tasini*, 533 U.S. 483 (2001).

7. *Reed Elsevier, Inc. v. Muchnick*, 130 S.Ct. 1237 (2010).

are composed at a computer keyboard or with our thumbs on a Blackberry, Arthur has a world-class collection of fine, limited edition, numbered fountain pens, most of which bear one or another of his favorite numbers.

Now I can't reveal those numbers here today lest I inadvertently disclose someone's computer password or pin number, but his fondness for fountain pens is a vice that Arthur and I share. In fact, Arthur's favorite pen shop holds a pen fair twice a year when the makers of the world's finest and rarest fountain pens descend on West 45th Street to show off their wares. The proprietors of the shop have taken to calling Arthur's assistant and mine to find a mutually convenient time when we could meet at the pen fair to check out the newest temptations and then grab some lunch. They understood perhaps better than we, that we each bought more pens when egged on by the other than either of us would if left to our own devices. When we discovered, to our horror, that some of the vendors themselves were timing their arrival at the fair to coincide with our visits, it became clear that we ought to focus more on the lunches and less on the pens.

But on a more serious note, whenever I've needed career advice, a mentor, or just a friend, Arthur has been there. I love spending time with Arthur, because he reminds me of why I wanted to do this in the first place, and he makes me feel good about being a lawyer. Now Arthur would tell you, and I'm sure when he stands up will tell you, that his life has been enriched by some great mentors and friends: Ben Kaplan, Fred Friendly, Charles Alan Wright, and others, including many in this room today. But what he may not appreciate is that he has been precisely that to so many of us. I'm grateful to the law school for having given me this opportunity to say so. Congratulations, friend, on a richly deserved honor.

HENRY B. GUTMAN

Partner

Simpson Thacher & Bartlett LLP

TRIBUTE TO ARTHUR MILLER

CHARLES GIBSON*

It's somewhat difficult to come this late in the program, as most things have already been referenced. I actually prepared remarks in a song called "What Would Arthur Miller Do," but that role was usurped. There was reference made by one of the speakers to all of the great legal minds that are on this stage. I applied to three law schools, and I went zero for three. This is obviously a very important event, so important that Arthur has put on a vest.

Absolutely true story: for a time my elder daughter was dating a young man, a Harvard grad who was at Georgetown Law. This was before she herself went to law school. The young fellow had a question he posed at our dining room table, one night, about whether he should advance his career by taking a clerkship that he had been offered, or a prospective job that offered much greater remuneration, of which he was in need, with educational loans to repay.

"Why don't you call Arthur Miller for advice," she said. He looked at her incredulously.

"Do you know Arthur Miller?" he said.

"Sure, my father works with him. He was at my folks' anniversary party last year."

His jaw dropped, and he said, "Arthur Miller is a god."

I told Arthur that story. I wasn't sure I should. Rather than finding it amusing, I was very worried he might agree with the young man.

As has been noted here by previous speakers, Arthur was Legal Editor for ABC's *Good Morning America* for twenty years. For nine of those years I was the host of the program. I had the best of both worlds: I got a legal education from Arthur Miller, and I never had to worry about getting a grade. And I got to ask the questions. He would have five or six minutes on the air to explain a legal issue, or dissect some case that was in the public consciousness at the time.

But the times I treasure, and there were many of them, were when he would sit for as long as I had questions, to explain the law, and its intricacies and its nuances to me. We would talk legal specifics, and we would talk legal theories. In my thirty-three years at ABC, I worked with many professors, members of the academy. And

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I can count on the fingers of one hand those who could make their subjects come alive for the audience. Arthur was, and Arthur is, the best. He could make almost anything understandable for a mass audience, but the most important thing to me is that he never dumbed down his message, and he never patronized his audience.

A number of times on *Good Morning America* we had Arthur debate an issue for ten minutes or so with Alan Dershowitz. I wish morning television did such things still, but I remember one time in particular it was spirited, as you might expect. Neither gave the other any quarter. But what made it most memorable to me is that I had a chance to speak with each one of them separately after the broadcast. Both of them said, "Well, I guess I got the better of him today."

And a lot has been said about *Miller's Court*. I always made it a point to watch it. Arthur attracted the most amazing panelists: prominent lawyers, ethicists, government officials, judges, even sometimes Supreme Court justices. That was a long time ago, as has been mentioned, when that show was on the air. John Marshall, I always thought, made a great guest. But being something of a student of television hosting, I watched Arthur closely, and I learned a lot from Arthur then as well. Tying the panel in knots with his hypotheticals and complex questions. And so one time I thought, "I'll try that method on *Good Morning America*." I forget what the issue was, but I posed some "Well, what if . . ." question to the guest. He knocked it out of the park, and I had no comeback, which Arthur always did, and I remember thinking, "You idiot, don't try to copy the master."

Reference was made to Arthur as a pussycat, I think something of a puppy dog. I understand he's tough in class. He may have dressed down a student or two. But I doubt there are many times when any Arthur Miller-trained lawyer is caught flatfooted. In the end his students, I suspect, indeed I know, prosper and pass their courses. He can't be so tough. I think of Calvin Trillin's remark: "If law school were so tough, why are there so many lawyers?"

There was one time when I heard Arthur express some doubt, out of character, I realize. That's probably why I remember it. We were riding on a bus to some *Good Morning America* location, and Arthur talked about former students coming to him in their late forties, early fifties, switching into second careers, either burnt out or disillusioned about the law. And Arthur, for a minute, got quite reflective and started to question whether his teaching had been quite good enough, that maybe there had been something that he could've done, should've done, that would keep them more ener-

2011]

GIBSON TRIBUTE

25

gized or enthused about their profession. It saddened me for a moment, because I can't imagine anyone who would do a better job energizing students, or engendering enthusiasm, than Arthur. His enthusiasm seems boundless, and his passions are infectious. And his interests are so varied.

For proof the latter, I do point you to the Japan Society, just mentioned, where that exhibition of works of Utagawa Kuniyoshi are now being shown, and those works, as mentioned, come from the personal collection of Arthur R. Miller. I didn't know much about Kuniyoshi, but I spent some time researching him on the Internet. I did not use Google, Arthur, I did not. The press release announcing the exhibition says his works, and I'm quoting here, "depict giant spiders, skeletons and toads, Chinese ruffians, woman warriors, haggard ghosts, and desperate samurai combat." It all sounds like the depiction of a law school faculty meeting.

You can make a lot of money being a lawyer. H.L. Mencken once remarked, "Lawyers protect us against robbery by removing the temptation." Arthur has done well, but I suspect had he devoted himself entirely to legal practice, he would have been a very rich man. Instead, he devoted himself to teaching, and there is no more honorable profession in the world. Whether teaching a television host at 6:15 in the morning, and I can tell you sometimes the vest was unbuttoned. That was exciting! Or whether he's talking to dozens in a lecture hall, or whether he's speaking to millions through the medium of television, I think we would all agree there is no better teacher than Arthur Miller.

CHARLES GIBSON

Former Anchor, ABC's *Good Morning America*
Former Anchor, ABC's *World News with Charles Gibson*

TRIBUTE TO ARTHUR MILLER

DAVID L. SHAPIRO

Some 54 years ago, a young man in a three-piece suit, with a red silk handkerchief in his breast pocket,¹ walked into Gannett House, the home of the Harvard Law Review, and the world of the law has never been the same since.

Though I was there to greet him when he arrived, and was technically his senior, he has always been a role model for me, and I have never stopped trying, but haven't really managed, to follow in his wake.

A few examples. As a student, Arthur became a protege, in both Civil Procedure and Copyright, of the wondrous Ben Kaplan, who, sadly, could not join us at this Dedication; and Arthur later worked closely with Ben on such ground-breaking projects as the revision of the multi-party provisions of the Federal Rules. (In fact, I've been told, Arthur actually helped draft the infamous Rule 23(b)(3)² while he and Ben rode together to Martha's Vineyard.) It took some years before I too managed to become a friend, co-worker, and acolyte of Ben's, and Arthur and I both continue to be awed by Ben's wit and wisdom. And when Arthur turned to teaching and scholarship, he emerged as the leader of a team that has produced, and still produces, certainly the outstanding, and perhaps the most voluminous, legal treatise in the country—the only one, I believe, to be found in the NYU faculty library, and the one I always turn to first (and often last as well) when I have any problem involving federal procedure. So I, as emulator, have managed to produce a tiny paperback on *res judicata*, whose sales have just recently climbed into double digits. And finally, when Arthur turned to television and was recognized as one of the first, and probably still the most respected, of legal scholars to help make hard legal issues accessible to the tele-viewing public, I settled for playing cameo roles in home movies starring my granddaughter.

The point is clear. Arthur has made, and continues to make, an extraordinary mark in the world of the law and in the broader world of public affairs. He is a public intellectual in the very best sense.

1. He probably wasn't wearing a suit and didn't have a visible handkerchief of any color, but I always think of him that way.

2. FED. R. CIV. P. 23(b)(3).

And what a wonderful teacher. Students who graduated decades ago, and those who entered law school only recently, consistently put Arthur at the top of their list when asked to identify their best and favorite teachers. His rigorous questions, his incisive wit, his flair for the dramatic all coalesce to forge an experience that students simply do not forget. He remains one of the very best, and not just on *Erie*³ day, when he comes into class wearing costumes ranging from Elvis Presley whites to Superman red and blue. Indeed, I had the pleasure of sitting in on a class on aggregate litigation that he co-taught here with Sam Issacharoff only a few years ago, and the warm but feisty interplay of that duo with each other and with a gifted, self-selected class was a marvel to behold. Their different perspectives, when combined with their enthusiasm, knowledge, and skill, made for one of the best courses I have ever experienced, as student, teacher, or hanger-on.

Perhaps what is most admirable about Arthur is his continuing emphasis on the importance of the law as a distinct discipline, even when it draws on other disciplines for its growth and vitality, and his insistence that teaching and writing about law can and should be meaningful beyond the walls of the academy. Arthur's career is the best evidence that a life in the law can successfully combine teaching, scholarship, practice, law reform, and service to the broader public. For that, we are all in his debt.

And I haven't even had time to mention Marilyn Monroe or *Death of a Salesman*.⁴

DAVID L. SHAPIRO

William Nelson Cromwell Professor of Law Emeritus
Harvard Law School;
Faculty in Residence
New York University School of Law

3. *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

4. ARTHUR MILLER, *DEATH OF A SALESMAN* (1949).

TRIBUTE TO ARTHUR MILLER

JEFFREY TOOBIN

If I think of the two people who are most responsible for my television career, I think of Arthur Miller and O.J. Simpson. Unfortunately, O.J. could not be with us today, but it is my pleasure to pay tribute to the great Arthur Miller.

I first met Arthur when I was a student at Harvard Law School. Alas, I was not his student. I was not assigned to his first year Civil Procedure class, and I think I was just too intimidated to take any of his elective classes—Copyright or Federal Courts—and that was because I was in law school when Scott Turow's *One L*¹ was essentially, if not actually, required reading, and everybody knew that he was Professor Perini. It's really kind of a shame, because you'd be surprised how often *Younger*² abstention and Rule 23(b)(3) came up in my coverage of the balloon boy case.

Originally, like so many people in the Boston area, I got to know Arthur as a viewer of *Miller's Court*, which was broadcast on the once-great ABC affiliate WCVB. It's impossible to overstate how interesting and influential *Miller's Court* was. Sometimes he took on high profile cases, sometimes everyday legal problems of ordinary people, but he turned them into terrific television. He was the first person to do this. And it's worth emphasizing that point. Arthur was the first person, the very first person, to recognize that law could make compelling and important television. Steven Brill did something similar with legal journalism in print when he invented *The American Lawyer*, but Arthur Miller did it for television. And how Arthur invented modern television coverage of the law is just as important as that he did it in the first place. Arthur never dumbed down his material. You'll notice that Charlie Gibson used exactly the same sentence that I did, but I work in cable news, so I am not afraid of tedious and endless repetition. Sure, Arthur simplified and translated legalese into English, but that's just good journalism. Law, more than most other fields, lends itself to cheap sensationalism and crude summary, but Arthur never did it. Not in *Miller's Court*, not on *Good Morning America*, not at Court TV, not at any time in his television career.

1. SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* (1977).

2. *Younger v. Harris*, 401 U.S. 37 (1971).

In an entirely different chapter of Arthur's television career, he was, as you've heard several times today, the host of the great *Fred Friendly Seminars*. I confess a particular bias in favor of this program because in one of the early episodes, you can see, seated in the audience, seated right behind Justice Potter Stewart, who was a guest on one of these programs, the Channel Thirteen executive who was in some part responsible for bringing that program to the air, and that was Jerry Toobin, my dad. The seminars were like law school classes on steroids, with students who had egos on steroids. In the seminars, the panelists, who were often Supreme Court justices, members of Congress, high profile journalists, and the like, grappled with hypothetical problems that were orchestrated by a moderator, in the best cases, Arthur himself. They are really great television, and like so many others I really urge anyone who hasn't seen them to go track them down. They live up to Fred Friendly's famous words: "Our job is not to make up anybody's mind, but to open minds, and make the agony of decisionmaking so intense, you can only escape by thinking."

Let me conclude by repeating my gratitude to Arthur. He is of course not responsible for all the law on television that followed him. Holding Arthur responsible for Judge Judy and Nancy Grace would be like blaming Hippocrates for Dr. Kevorkian. He is, as you know, a scholar, a teacher, a litigator, an art collector, and, God help us, the first television legal analyst. He is the one who set the standard to which I aspire. And I join you in saluting him today.

JEFFREY TOOBIN
Senior Analyst, CNN Worldwide;
Legal Analyst, *The New Yorker*

TRIBUTE TO ARTHUR MILLER

LINDA J. SILBERMAN

Well, it's stunning to be in this group of speakers, and I'm really not quite sure how I managed to get here. Except that I see that I'm the last speaker, and you probably all are giving a sigh of relief at that, and I promise to be brief. But there's a symmetry in all of this, because Danielle began these talks, and Danielle is presently Arthur's Research Assistant. And I am here, I suppose, because, perhaps, I am Arthur's oldest living Research Assistant from the past. But I'm honored to be able to speak as part of this tribute to Arthur, and although my long connection with Arthur enables me to speak very personally about him, some of what I say is really on behalf of many other former students and Research Assistants of Arthur's, of whom there have been thousands over the years, and they would also want to acknowledge his mentoring and influence and say "thank you." Indeed I know they referred to us, the three of us who were Research Assistants when I worked for Arthur, as "the army," and when I look around now at his Research Assistants it's much more like a militia. If you look at the long list of Civil Procedure teachers in American law schools, one will find so many of Arthur's protégés, and some of them, like Harold Koh and John Sexton, have extended that influence far beyond just the academy.

My relationship with Arthur has spanned almost forty-five years. That can't really be right, it can't be forty-five, I'm not forty-five years old. But I was Arthur's student in Civil Procedure at Michigan in 1965, which was his first year at Michigan after his years at Minnesota. And he left his mark on me quite early in that semester. Danielle, some of the things you say resonate very closely with me because in that first class, and I tell you it was the first class, Arthur left me terrorized, and I was certain that I should never have come to law school. But Arthur had a method to all of this, and I was determined to show him that I was going to do this, and I was going to be successful, damn him.

It was the start of the second semester, after the midterm exam in which I had done quite well, when he asked me if I would like to be one of his summer Research Assistants, and that experience was extraordinary. As he did for so many, he trained the three of us to be careful, exacting, disciplined, thoughtful, and creative lawyers. I learned more in that summer than in the rest of my law school years. But I wouldn't want you to think that it necessarily started out

so perfectly. I already told you about the terror on the first day. But when Arthur first interviewed me for a research position, he asked me what I thought I wanted to do with my law degree. I said I hadn't really thought much about that; that I had attended law school classes as an undergraduate and I loved them and I really wanted that intellectual experience in a graduate education. Arthur then asked me if I thought I might like to teach. I immediately said, "No, no, I don't want to do that. I was an English major and I don't want to teach and that's why I came to law school." He looked stunned, and I realized, perceptive as I am, that this was not the answer one gave to a person who was dedicating his life to being a law professor, and so I explained quickly that I thought teaching was really a great profession, it just wasn't for me. Funny how things turn out, isn't it? Arthur had great faith in me, he hired me anyhow. I worked on that first edition of his casebook, and, as he did with John, he asked me as a second year student if I would like to teach his class, and I did. And it's the result of his influence, his personality, his training, his support, and help that I too became a Civil Procedure teacher.

But being Arthur's Research Assistant wasn't always easy. Danielle, you probably have similar experiences. Although I think Arthur has really mellowed over the years. Nobody has had the experience that we did so long ago. Arthur has always had very high standards and an unfathomable work ethic for both himself and for his Research Assistants. So there was one night during my second year when I was still working for him—it's very hard to get out. This time it was two o'clock in the morning, and both Arthur and I were in the office. I was exhausted, I had class in the morning, I was working on my Law Review note, and I told Arthur I was tired and I needed to go home. He looked up, stunned, stared at me hard and said, "You know, with that attitude, you'll never be a professional." Incredibly, I believed him. But, I did manage to go home, suffering all the time and knowing that probably I could never do this. But, when I later worked in a law firm in Chicago, and worked for a person who was said to be extremely demanding, nobody in the world would work for him, I thought he was a creampuff compared to Arthur.

Now I have a confession to make about how I viewed Arthur in those early days, and as a result you may be very skeptical about my judgment of human character. It wouldn't surprise you that I, like many, was mesmerized by Arthur as a teacher. He was brilliant and exciting in the classroom, and out of the classroom he was absorbed in interesting, but, at least to me then, somewhat dry, esoteric issues

of Civil Procedure. I now know that this is the most exciting subject in the world, but it was a while ago. So I was working on an esoteric issue with Arthur about the pleading and proof of foreign law. He was producing a treatise on New York procedure, the Weinstein, Korn & Miller¹ treatise, and was about to take on the task of overhauling a large federal practice treatise, now the famous Wright, Miller & Cooper.² And so I was enormously impressed that Arthur would spend these long hours on intricacies of Civil Procedure problems that did not seem to attract public attention, or the grand stage of media and television where his close friend Yale Kamisar could always be found discussing the recent *Miranda*³ case and other important criminal cases. So my view then was that Arthur was content to work as a secluded monk who cared nothing about the limelight, or public adoration. He did not want to be a TV star or need to be in the spotlight. He was just a Civil Procedure teacher.

Well, my view changed, and as we know, Arthur has a great gift for communication. Not just to law students in the classroom, but to lay people about a range of important legal issues with broad, public ramifications. We've heard today about the *Fred Friendly Seminars*, his role as legal correspondent on *Good Morning America*, his TV show in Boston, *Miller's Court*, and that's all a great testament to his communication skills. He's able to take complex information and make it immediately understandable even to the uninitiated.

I'll always remember a phone call that came from Arthur early one morning, very early in the morning, about six o'clock. "Is everything OK?" I asked. "Yes," he said, "but just tell me everything you know about international child abduction. I'm on TV in a half hour." I thought to myself, "This is absolutely impossible. I know everything about this subject, and I couldn't be on TV in an hour!" I gave him a summary of the issues as I saw them, and I turned on the TV. And it was, as always, a magnificent performance, clearly defining the issue, analyzing the problems presented, engaging the viewer, making it completely understandable, and seemingly the world's greatest expert on this topic. Arthur, sometimes it's really hard to be your friend.

After the years of being his student and Research Assistant, as well as babysitter for his son Matthew, I developed a close friendship with Arthur that grew steadily over the years. When NYU was

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

2. CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, *FEDERAL PRACTICE AND PROCEDURE* (3d ed. 1998).

3. *Miranda v. Arizona*, 384 U.S. 436 (1966).

looking for new faculty about a thousand years ago, Arthur recommended me to the hiring committee, and I have no doubt that it was his strong support and recommendation that led NYU to offer me this job—this job that I love, for this subject that I love. And when I came to NYU, I wanted to emulate, if one could ever emulate, Arthur. So I became a Civil Procedure teacher with Arthur as my role model.

On a more personal note, we have shared ups and downs in our lives. He was at my wedding to Victor, and I have been at almost all of his weddings. It's an enormous pleasure to have him close by as a colleague now, and to share our lives in both professional and personal ways. Some of you may know that his Personal Assistant Kristin is my niece.

Now, I've almost always been happy and proud to acknowledge Arthur's enormous influence, but there's one place where I need to set the record straight, and to be fair, Arthur himself has set it straight. And that's with respect to Arthur's wonderful Kuniyoshi Japanese print collection that he has recently given to the Friends of the British Museum and which is presently on display at the Japan Society. And I say to you, if any of you have not seen it, I urge you to go. It is absolutely spectacular. I also collect Japanese prints, of a different artist of about the same period, though of course, my collection is much smaller. And there have been some that have said to me—knowing of Arthur's extensive collection and of his enormous influence in my life—"Really Linda, did you have to follow him in your art collecting as well?" But it was I who first started collecting Japanese prints, those of a printmaker by the name of Yoshitoshi. Arthur was at my apartment one day, was intrigued by my prints, and we went together to look at prints at a New York gallery. Shortly thereafter and over the years, Arthur became one of the foremost print collectors of a different artist, Kuniyoshi, and he has now generously given that collection to the Friends of the British Museum. But it's been gratifying for me to know that perhaps I may have opened at least one door for Arthur, after the many that he opened for me. And I have always been moved by the fact that Arthur chose to collect the prints of Kuniyoshi, who was none other than Yoshitoshi's teacher. And that is really the reflection: Arthur is the consummate teacher and mentor and the scores of former students and Research Assistants and others who have felt his influ-

2011]

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35

ence are here to honor him today. Just look around. With thanks
Arthur, from all of us. Thank you.

LINDA J. SILBERMAN
Martin Lipton Professor of Law
New York University School of Law

TRIBUTE TO ARTHUR MILLER

HON. STEPHEN G. BREYER

Rumor has it that famed teacher and scholar Arthur Miller dressed up as Superman at least once a year in his civil procedure class. And no one noticed! Quite right. They saw nothing special because he *is* Superman: faster than a speeding bullet, he explains complex legal issues to lay audiences on television; more powerful than a locomotive, his treatise brings law and order to the complex world of civil procedure; able to leap from class to class in a single bound, he has helped thousands of law students understand the intrinsic interest as well as the human importance of the law. It's our favorite teacher. It's our scholarly writer. It's our public lecturer. It's our Super Miller, who has done so much to help the law better the lives of his fellow citizens.

Thank you, Arthur, and congratulations to you and to NYU on this happy occasion.

STEPHEN G. BREYER
Associate Justice
Supreme Court of the United States

