

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.

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

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