

## 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.

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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.

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