

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

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

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