

MICHAEL MOFFITT*

Arthur Miller Scared the Hell out of Me

INTRODUCTION

My experience of Arthur Miller may have been unique. Perhaps the thousands of other law students who took his classes found him charming, inspiring, erudite, entertaining, and brilliant throughout their time with him. The tributes appearing in this symposium issue of the *Oregon Law Review* suggest as much, as do the accolade-filled testimonials to Arthur Miller that I have seen elsewhere. But academic candor demands that I report that this was not my experience when I was one of his students.

Arthur Miller scared the hell out of me.

THE FIRST DAY OF CIVIL PROCEDURE

My first course in law school was Civil Procedure with Professor Miller. Like many of my classmates, I arrived early to the cavernous classroom in Austin Hall on the Harvard Law School campus. I was assigned to a seat toward the back, in the middle of a large bank of chairs. At least on the hiding-place criterion, my assigned seat could hardly have been better. I sat down in silence and waited. The clock suggested that we had at least twenty minutes until class would start.

The average temperature in the fall of 1991 in Cambridge, Massachusetts, was 120 degrees with 120% humidity.¹ The discomfort commonly associated with such conditions was enhanced by the presence of more than one hundred newly minted law students

* Philip H. Knight Dean and Professor of Law, University of Oregon School of Law. The author thanks, but does not blame, his research assistant Alyson McCormick.

¹ I do not have access to meteorological data to support this assertion, but my memory on this point is unambiguous.

awaiting the formal start of their law school careers. After what felt like a few hours of listening to nervous silence, I turned to introduce myself to those sitting around me.

“Hi, my name is Michael,” I said, in a voice suggesting a confidence level wholly different from that which I actually felt.

To my utter (but probably competently disguised) horror, the person to my right introduced herself and told me about what a great time she had at Princeton, and the person to my left told me about the master’s degree program he had just completed at Oxford. Then, as if aiming for a coup de grace, he asked, “Have you met Fred?” indicating a briefcase-carrying man toward the front of the classroom. “He’s a surgeon.” My facial expression must have mistakenly suggested that I wanted the speaker to provide additional detail, because my classmate continued, apologetically, “I can’t remember what kind of surgeon.” I could think of no elegant way to extract myself from the situation, so I awkwardly returned temporarily to sitting in silence.

To put this experience in context, I did not attend an undergraduate institution that typically feeds Ivy League law schools. I attended Marietta College, a wonderful little liberal arts college in southeastern Ohio. I had done some research while I was considering different law schools, and at that point in the more than 125-year history of my college, exactly one graduate from our Appalachian campus had gone on to Harvard Law School. That was during World War II. Furthermore, I did not know any attorneys growing up. Looking back, I believe that I must have met an attorney before going to law school, but if I had, he or she had not been outed as a lawyer to my knowledge. Very little in my background directly prepared me for law school, and nothing in these minutes leading up to my first class enhanced my confidence.

Still, the silence was killing me, and the clock had not seemed to advance discernably in the direction of the beginning of our class. I changed the topic, saying feebly to my neighbors, “So, um. Civil Procedure. Arthur Miller. Wow.” I had no idea what topics Civil Procedure covered. I had originally thought that I had heard of Arthur Miller, but the night before our first class, the man living across from me in my dormitory had disabused me of my mistaken confusion between my Civil Procedure professor and a famous twentieth-century playwright and essayist by the same name. To my surprise and continued anxiety, my whispered sentence fragments were enough to cause those sitting around me to launch into

reverential stories about the person from whom we would all be taking this yearlong course.

Mercifully, class time eventually arrived, as did Professor Miller. He strode into the once-again-silent classroom, marched to the podium, and conducted our first class. The one thing I remember vividly about that first day with Professor Miller was that he did not call on me. He did call on a student from North Carolina. He called this student's name, casually made a reference I did not understand but that the rest of class clearly recognized as a joke, and proceeded to ask a legal question the answer to which I do not know even to this day.

By the end of the first day of class, Arthur Miller scared the hell out of me.

LAVENDER V. KURN . . . MR. MOFFITT?

It had to happen eventually. I spent dozens of 1L class sessions fearful that I would hear my name pronounced with a Brooklyn accent. Each day I was prepared, of course, to the best of my abilities (read: not very prepared). But I had the unshakable impression that being called on would not count among the highlights of my educational career. Indeed, I had some concern that being called upon in Professor Miller's class would closely precede my expulsion from law school, although I had no evidence that any of my classmates had yet suffered this fate.

I remember literally nothing about the day other than the fact that Professor Miller's first utterance was, "Now, Lavender versus Kurn," followed shortly by, "Mr. Moffitt?"

I had read the case. I had scribbled notes in the margins. I may have even taken notes in something resembling a brief, although I cannot now recall with any certainty.

I answered Professor Miller's first couple questions with at least tolerable competence, apparently, for he did not indicate anything about my summary dismissal. Indeed, he continued to ask questions. I got as far as explaining that this was an action in which two different railroad companies, Frisco and Illinois Central, may have contributed to the fate of a now-deceased railroad worker, the cause of whose demise was in dispute. One company owned an east–west track, the other owned a north–south track, and the railroad worker's body was found near the intersection of these two tracks.

“Which company owned the north–south tracks?” Professor Miller asked.

Without hesitation or, surprisingly, fear, I said, “I don’t know.”

“Hmmm?” Professor Miller responded, this seemingly one-syllable utterance extending long enough that it managed at least a full octave in increasing pitch as he said it.

“I don’t know.”

“Hmmm?” he repeated, with at least as much theatrical flair.

In the back of my mind, I heard a faint murmur. “Issstrr,” it seemed to say.² But I dismissed the passing voice and pressed onward.

“I don’t know.”

“Hmmm?” His monosyllabic question was, improbably, louder this time than either of the two previous times, despite my obvious inability to answer.

And here, the story goes horribly awry. Without forethought, I said the next thing that occurred to me under the circumstances, in a steady, plain, and regrettably loud voice:

“I don’t know, but maybe if you say ‘Hmmm?’ again, I’ll remember.”

A collective shock ensued. It remains unclear to me which was greatest: my shock, Professor Miller’s shock, or the shock of my 100 classmates now riveted in horrified fascination. The shock and its accompanying silence were not brief. I did not consult a clock during its pendency for obvious reasons, but my memory of the experience suggests that the silence lasted for approximately seventy-five hours.

In all candor, I do not recall Professor Miller’s response, but it was he who eventually broke the silence. I do not recall answering any other questions, so perhaps he moved along to someone else. Such a decision on his part would mismatch badly with the Socratic approach I saw him undertake for the entire academic year. So perhaps he asked me questions for the rest of the hour. I do not know, and I fear the truth will likely forever escape history.

² Later that day, as I replayed the details of this experience in my mind, over and over, in second-by-second detail, I came to realize that the murmuring voice I had heard in my mind was that of my classmate Doug. Doug sat immediately behind me, and he had been trying discretely to feed me the correct answer (Illinois Central) to Professor Miller’s question. Why I did not have the good sense to trust the voices in my head, on this of all days, I do not know.

The basic facts of my exchange with Professor Miller were the topic of considerable, focused, and from my perspective entirely unwanted attention for some time after. Indeed, the exchange was commemorated on our class T-shirt, produced at the end of the academic year. The back of the shirt had Professor Miller's face, large enough to cover most of the shirt, with the phrase "Hmmm?!!" written in a cartoonish way above his visage. I believe someone from my class (I cannot imagine that it was me) even supplied one of the T-shirts to Professor Miller himself.

But nothing in all of this did anything to change the relevant fundamentals:

Arthur Miller still scared the hell out of me.

TWO THINGS I LEARNED FROM ARTHUR MILLER

I studied harder for Professor Miller's exams than anything I had ever studied for in my life. I listened to his audiotapes until the cassettes wore out, and then I borrowed the tapes from another classmate to make sure I had his words committed essentially to memory, even though we were allowed to use our written notes during the final exam. I took practice exams using every available exam he had ever given. My outline for his class exceeded 100 typed pages, complete with indexes, cross-references, and examples. Weeks before our final, a short bidding war took place in our dormitory, as someone had spread the rumor that I was selling a copy of my outline.³ I spent more time on Civil Procedure than on all of my other doctrinal classes combined.

I did not study this way because I was inspired to do good work in the world, although it had been made clear to me that Professor Miller and others had put Civil Procedure rules to such use. I did not study this way because I was seeking Professor Miller's approval, although I watched with some jealousy as select classmates seemed effortlessly to have garnered his admiration.

I studied this way because Arthur Miller scared the hell out of me.

And in doing so, I learned at least two things from Arthur Miller.

³ In retrospect, given that it took me thirteen years and two refinancings to pay off my law school student loans, it might have been wise for me to pursue this revenue opportunity.

1. *I Learned Something About Civil Procedure*

I learned Civil Procedure from Arthur Miller. I performed well on the midterm and on the final exam in his course. Given my history in his class, my scores stand as unassailable testament to the security (to say nothing of the wisdom) of the blind-grading process employed in law school exams.

The fact that I learned Civil Procedure from Arthur Miller distinguishes me from virtually no law student who graduated in the last few decades. Arthur Miller's books, hornbooks, and tapes are nearly ubiquitous in law schools, and for good reason. Indeed, as several of the other tributes in this Symposium make clear, practicing attorneys, judges, and legal scholars continue to credit Arthur Miller for their comprehension.⁴ Without shame, I can even report that I listened to the entire set of Miller tapes again the summer before I taught Civil Procedure for the first time. Arthur Miller taught me Civil Procedure.

2. *I Learned Something About Teaching*

I also learned something about teaching from Arthur Miller. He was one of the most effective teachers I have ever had in my life. To be blunt, it was not easy for me to confess this fact for a long time. From this hesitant recognition of his effectiveness came my lesson about teaching. With some discomfort, I was forced to juxtapose two truths: (1) Arthur Miller was incredibly effective at teaching Civil Procedure, and (2) as I may have mentioned, Arthur Miller scared the hell out of me.

I *wanted* to believe that I would learn the most from the professors who were nicest to me, the ones who made me feel best about myself, who demonstrated conspicuous compassion for my experience in the classroom. In fact, I had not simply *wished* for this to be true. It *had* been true to my educational experience up until this point—so much so that I had not even questioned the potential disassociation between “nice” and “good” when it came to instruction. My best teachers in elementary school were the nicest ones. The same was true in middle school, in high school, and in college. Even in law school, the other

⁴ See generally Elizabeth J. Cabraser, *The Procedural Vision of Arthur R. Miller: A Practitioner's Tribute*, 90 OR. L. REV. 929 (2012); Ronald M. Gould, *A Student's Tribute to Professor Arthur Miller*, 90 OR. L. REV. 923 (2012); Mary Kay Kane, *Foreword*, 90 OR. L. REV. 913 (2012).

two professors from whom I learned the most were two of the kindest people I have ever met.

In early 1992, however, I held no affection for Professor Miller. I was probably still feeling embarrassed about my performance the one time he had cold-called on me in class. I also probably remained annoyed at having been used as what felt like a prop in his theatrical performance that day. Many in my class not only held him in a position of respect approaching reverence, but also seemed sincerely fond of him. I dismissed their attestations about his brilliance and humor, thinking them to be examples of the kind of misguided affection one might find a platoon of recent recruits directing toward their drill sergeant sometime well after they had survived boot camp.

Rightly or wrongly, I did not like Professor Miller, and yet unarguably, I had learned a tremendous amount from him. The time I spent wrestling with these two facts made me a better teacher than I otherwise would have ever become. I have rejected a simplistic causal relationship between my fear and learning. After all, I had previously endured frightening teachers from an early age without managing to learn very much.⁵ I have similarly rejected the previously unchallenged way in which I consistently conflated my affection for a professor with my perception of her or his effectiveness. And if pushed to choose, at least in some contexts, I came to learn from my post-Arthur Miller contemplations that if one were forced to choose between the two, one might reasonably not always choose affection.

FAST FORWARD TWENTY YEARS

Many reasonably well-adjusted years passed without me spending much of my conscious mental energy on Arthur Miller. After clerking and spending some time working with clients, I joined the ranks of those who taught law for a living. Several years ago, when I was Associate Dean at the University of Oregon School of Law, the faculty was considering a candidate for appointment as an entry-level tenure-track faculty member. This candidate had listed Arthur Miller

⁵ See, for example, my kindergarten teacher, who locked me in a coat closet for an entire day because she was unimpressed with my proffered expert opinion that her lesson plan one day was “boring”; my Catholic school math teacher, who dispensed corporal punishment as the only available cure for the contagion of ignorance that I apparently risked spreading throughout our middle school classroom on the day we were to study non-Cartesian vectors; my eighth-grade science teacher, who measured in geologic eras the appropriate duration of easily earned detentions.

as a reference because she had served as his research assistant in law school. Without hesitation, I volunteered to give him a call. I went to my office, held the phone in my hand, and then stared at the phone in utter disbelief. Three time zones and more than a decade of distance had no apparent effect on the fundamental truth that Arthur Miller still scared the hell out of me.

Eventually, I called the number.

“Hello, um,” croaked a voice vaguely resembling one with which I had not spoken since puberty, “um, Professor Miller?”

“Yes, hello,” replied an unmistakable voice.

I found my balance quickly, and the Arthur Miller with whom I spoke mismatched badly with the Arthur Miller of whom I had constructed my memories. The person on the other end of this call was funny, curious, patient, persuasive, helpful, and . . . kind.

“Who are you and what have you done with Arthur Miller?” I wanted to shout. Instead, I thanked him with as much professionalism as I could muster in my self-absorbed state of shock.

Not long after that conversation, Assistant Professor Jennifer Reynolds, Professor Miller’s former research assistant, joined the Oregon Law faculty. Her addition brought the ranks of Arthur Miller alumni on the faculty to seven: Ralph James Mooney (Michigan ‘68), Richard Hildreth (Michigan ‘69), Ibrahim Gassama (Harvard ‘84), Merle Weiner (Harvard ‘90), Michael Moffitt (Harvard ‘94), Michelle McKinley (Harvard ‘95), and Jennifer Reynolds (Harvard ‘08). The list amounts to approximately one quarter of the tenure-track faculty at Oregon Law.

Even accounting for the overrepresentation of graduates from a small number of law schools within the legal academy, the odds of having so many current professors trace their Procedural lineage to a single professor are almost impossibly slim. A greater testament to the effectiveness of Arthur Miller’s teaching is difficult to imagine.

CONCLUSION

Last year, I had occasion to participate in one more phone call to Arthur Miller. By this time, I was Dean, and I was joined on the line by University of Oregon President Richard Lariviere and Professor Jen Reynolds. The purpose of the call was to share the news that Arthur Miller would be receiving the University of Oregon Presidential Medal in conjunction with his visit to the campus for the Symposium associated with this issue of the *Oregon Law Review*.

This award had only once before gone to someone other than a donor to the University, and it would mark the first time President Lariviere had awarded the Presidential Medal to anyone. It was an exceptional honor President Lariviere appropriately called “richly deserved.” The phone call was filled with gracious words all around. I cannot speak with confidence about how others experienced the call, but as the call ended, I realized that my world had changed.

Arthur Miller no longer scares the hell out of me.

But I still hope he never cold-calls on me again.

