

University of California, Hastings College of the Law
UC Hastings Scholarship Repository

Faculty Scholarship

2012

Foreword

Mary Kay Kane

UC Hastings College of the Law, kanem@uchastings.edu

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship



Part of the [Legal Biography Commons](#)

Recommended Citation

Mary Kay Kane, *Foreword*, 90 *Or. L. Rev.* 913 (2012).

Available at: http://repository.uchastings.edu/faculty_scholarship/311

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Faculty Publications

UC Hastings College of the Law Library

Author: Mary Kay Kane

Source: Oregon Law Review

Citation: 90 OR. L. REV. 913 (2012).

Title: *Foreword*

Originally published in OREGON LAW REVIEW. This article is reprinted with permission from OREGON LAW REVIEW and University of Oregon School of Law.

Foreword

MARY KAY KANE*

It is most appropriate that the *Oregon Law Review* is dedicating this Symposium, which is focused on questions relating to access to justice in our civil courts, to Professor Arthur R. Miller, because his entire career has been dedicated to trying to preserve and increase public access to justice. His voice on these questions can be heard in multiple venues. Through his work on rulemaking, legislative drafting, treatise writing, CLE seminars, public television, public speaking, litigation, and writing law review articles and popular books, Arthur Miller has contributed to collaborations among the academy, the bench, and the bar in ways that have enriched both the legal community and civil society in deep and profound ways. As a legendary teacher, he has mentored some of the nation's leading lawyers, law professors (several of whom are on the Oregon faculty), judges, law school deans, elected officials, and government servants. He has inspired countless young lawyers to pursue efforts to ensure that our civil justice system is open to all. His career is unique in the breadth and depth of his influence; he has fostered collaborations among the academy, the bench, and the bar throughout his legal career, and he has worked to bring understanding of law to the general public and to those most affected by it. Indeed, a review of

* John F. Digardi Distinguished Professor Emeritus, University of California–Hastings College of the Law. Most important for purposes of this Foreword is to acknowledge that I was a student in Arthur Miller's 1968 Civil Procedure course at the University of Michigan Law School. That experience was a wonderful immersion into the field of federal civil procedure. And the opportunities I had later as a student research assistant for Arthur Miller on his federal practice treatise, and yet later as a coauthor with him on his hornbook and several volumes of the treatise, were clearly the critical things that have allowed me to have the rewarding professional experience that I have had. So, like so many before and after me, being able to study and work with Arthur Miller has been a life-changing and enriching experience.

the list of participants in this Symposium—nationally prominent judges, practicing attorneys, commentators, and academics—and the range of topics they are covering—all of which are areas in which Arthur Miller has worked during his career—is evidence itself of the significance of his life-long contributions to our civil justice system.

To detail Arthur Miller's many accomplishments and activities through the years would fill this entire volume. But let me mention just a few so as to convey why his career is so awe-inspiring.

Since entering the teaching profession in 1962,¹ Arthur Miller has taught Civil Procedure, Complex Litigation, Copyright, and various advanced procedure topics. But his role as an outstanding teacher extends beyond the law school classroom. For years, he also has been active in conducting continuing legal education seminars, as well as participating in conferences that include judges, lawyers, and academics on cutting-edge issues of procedural law and judicial reform. In that capacity, he has been a leading speaker in public discussions about changes in things such as the federal pleading rules, class actions, and about the future of civil justice in the United States.² More generally, at New York University where he is currently a Professor of Law, he also holds an appointment in the NYU School of Continuing Professional Studies and, in that capacity, conducts seminars for subunits of the University on law-related topics such as "Sports in America," "Terrorism and New York City," and "The 2008 Election," to name a few.

Arthur Miller is a renowned legal scholar, writing myriad law review articles often analyzing the impact of new court trends on access to justice.³ He is also a coauthor of what is perhaps the leading

¹ Arthur Miller began teaching at the University of Minnesota Law School in 1962, joined the University of Michigan Law School faculty from 1965–1972, and then joined the Harvard Law School faculty, where he taught for forty years and is the former Bruce Bromley Professor of Law. He currently is a Professor at New York University School of Law.

² For example, a sampling of his speaking engagements on American civil justice in just 2009–2010 includes: (1) Testimony before the House of Representatives, Access to Justice (Oct. 27, 2009); (2) Moderator, American Bar Association, Thirteenth Annual National Institute on Class Actions, New Development in Class Actions (Nov. 20, 2009); (3) Speaker, Texas Tech School of Law, Access to Justice (Apr. 26, 2010); (4) Moderator, U.S. Judicial Conference Advisory Committee on Civil Rules, Panel on Pleadings and Dispositive Motions (May 10–11, 2010); and (5) Speaker, The George Washington Law School Conference on U.S. Civil Procedure and the Civil Justice System (July 27, 2010).

³ E.g., Arthur R. Miller, *From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure*, 60 DUKE L.J. 1 (2010); Arthur R. Miller, *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency*

civil procedure casebook in the nation,⁴ as well as a corresponding one-volume hornbook on the topic.⁵ And, even more extensive, he now serves as the senior author of the more than forty-five volume treatise, *Federal Practice and Procedure*, that he began working on in 1967 with Professor Charles Alan Wright.⁶ Finally, emblematic of his creativity, his understanding of real-world problems in the judicial system, and his ability to propose concrete solutions working alongside lawyers and judges is his contribution as the Senior Reporter for the American Law Institute's *Complex Litigation: Statutory Recommendations and Analysis with Reporter's Study*.⁷

He also has continued to practice in the civil litigation field, arguing significant cases in the Supreme Court of the United States and in every one of the U.S. Courts of Appeals, as well as appearing as an expert in other lawsuits. He also has contributed to amicus curiae briefs submitted to the Supreme Court on behalf of the academic community.⁸

His numerous appointments and work in the public sector on law reform issues present a remarkable body of accomplishments that deserves special recognition as well. Let me name just three as illustrations of the far-reaching impact of his work and reputation. First, he served (by appointment of two Chief Justices of the United States, Burger and Rehnquist) as the Reporter and then as a member of the U.S. Judicial Conference's Advisory Committee on Civil Rules and had previously served by appointment of Chief Justice Burger as a member of the Special Committee to Study the Federal Courts. Second, at the request of Chief Judge Murrah of the Tenth Circuit, who then directed the Federal Judicial Center, he served as the liaison between a group of federal judges and an American Bar Association

Clichés Eroding Our Day in Court and Jury Trial Commitments?, 78 N.Y.U. L. REV. 982 (2003).

⁴ JACK H. FRIEDENTHAL, ARTHUR R. MILLER, JOHN E. SEXTON & HELEN HERSHKOFF, *CIVIL PROCEDURE: CASES AND MATERIALS* (10th ed. 2009).

⁵ JACK H. FRIEDENTHAL, MARY KAY KANE & ARTHUR R. MILLER, *CIVIL PROCEDURE* (4th ed. 2005).

⁶ Full disclosure requires me to note that I now am a coauthor with him on thirteen of those volumes.

⁷ AM. LAW INST., *COMPLEX LITIGATION: STATUTORY RECOMMENDATIONS AND ANALYSIS WITH REPORTER'S STUDY* (Arthur R. Miller & Mary Kay Kane reps., 1994). I was the co-reporter for that project, but Arthur Miller created the idea of the project itself and was its guiding force throughout.

⁸ *E.g.*, Brief Amicus Curiae of Civil Procedure Professors in Support of Respondents, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) (No. 10-277), 2011 WL 794121 (class action certification).

Special Committee to develop and draft the original *Manual on Complex and Multidistrict Litigation*. Now in its fourth edition, the manual has become the basic guidebook for both the bench and bar in complex cases. Third, and in a different vein, he was appointed by President Ford to the National Commission on New Technological Uses on Copyrighted Works, which led to legislation updating the 1976 Copyright Act regarding various aspects of information technology. And, as a recognized expert in that field, he has served on various federal and state commissions and committees formulating policies and legislation on privacy issues.⁹

Finally, and certainly most important in terms of ensuring public access to our justice system, no review of Arthur Miller's career achievements, however brief, would be complete without mention of his many efforts at transmitting a greater understanding of the legal profession and the courts to the general public. His 1971 book, *The Assault on Privacy: Computers, Data Banks, and Dossiers*, represents one of the original attempts to discuss the implications of modern technology on personal privacy.¹⁰ His later book, *Miller's Court*, analyzed some of the great law-related issues of our day, such as the death penalty, school prayer, free expression, and the right to life and the right to die.¹¹ He wrote that book in dialogue form to help readers understand the tremendous complexity of those issues and how lawyers and laypeople might work collaboratively in thinking them through.

His path-breaking work on television includes serving for over twenty years as *Good Morning America's* first on-air legal commentator and his weekly Boston television show, *Miller's Court*, which ran for eight years and received numerous regional Emmy and other awards. Among the many recognitions of his outreach in communicating about our profession to general audiences are three American Bar Association Silver Gavel Awards and a Special Silver Gavel Award in 1998 from the ABA Board of Governors in recognition of his then-twenty-five years of promoting public understanding of the law and the American system of justice.

⁹ These activities involved him in the drafting of the Federal Fair Credit Reporting Act, the Federal Fair Information Privacy Act, changes in privacy policy regarding the decennial census and permissible uses of the social security number, to name a few of the policy matters with which he has been involved.

¹⁰ ARTHUR R. MILLER, *THE ASSAULT ON PRIVACY: COMPUTERS, DATA BANKS, AND DOSSIERS* (1971).

¹¹ ARTHUR R. MILLER, *MILLER'S COURT* (1982).

I want to conclude by emphasizing what I said at the outset: That the preceding description is only a snapshot of the many things that an observer of Arthur Miller's efforts and activities throughout his career could see. But this list itself demonstrates why he is an icon for the efforts of so many in our profession who work to preserve access to justice in today's world. We who have had the opportunity and enormous pleasure of being able to work for and with him on some of these efforts have all been touched by his larger-than-life contributions. Celebrating him in this Symposium seems only appropriate and due.

