

Washington University Law Quarterly

VOLUME 69

NUMBER 1

1991

A SALUTE TO FRANK W. MILLER

DEDICATION

On the eve of his retirement, the Law Quarterly wishes to dedicate this Volume to Professor Frank Miller in honor of his outstanding career as a scholar and professor and to pay tribute to his vital contributions to legal scholarship. A Salute to Frank W. Miller represents a coming together of friends, colleagues, and students to recognize his continuing influence in the area of criminal law. We hope this issue also demonstrates our gratitude for the years of guidance and inspiration he has provided this publication.

NOW SUPPOSE FRANK W. MILLER WERE TO RETIRE

JULES B. GERARD*

My first law school class began at eight o'clock on a Monday morning—with a bang. A slightly portly, curly-haired man strode purposefully into the classroom, sat down at the teacher's desk, flipped open his book, glanced at his seating chart, and said, "Doe, give us your brief of the *So-and-So* case." (At that less-kind, less-gentle, time, teachers did not use titles, like Miss or Mister, when addressing students in the classroom, but simply called them by their last names.)

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“Nothing like getting right down to business,” I thought to myself. “This guy hasn’t even told us his name!”

The teacher stared fixedly at him all the while Doe was reading his brief and continued to do so after Doe had finished. The silence that descended on the room deepened.

Five seconds passed.

Ten seconds.

The teacher continued to stare at Doe. Fifteen seconds passed.

Finally, the silence was broken by the teacher’s voice: “Poe, give us *your* brief of the *So-and-So* case.”

Poe’s performance met the same fate as Doe’s: silence and that unwavering stare.

“Roe, give us *your* brief of the *So-and-So* case.” At the sound of his name, Roe gave a start that lifted him six inches off his chair, picked up the sheet of paper on which his brief was written, and began to read from it—how, I will never know. His hands were trembling so violently that the rattling of the paper almost literally drowned out his voice.

When Roe finished reading the teacher nodded curtly and announced, “I suggest you other people check with Roe after class and learn how to write a brief.”

Those were the first fifteen minutes I ever spent in the presence of Frank W. Miller. I have thought of them often over the intervening thirty-five-plus years because Frank was then, as he is today, a popular teacher. How can a teacher who terrifies students the way we were terrified during that first class period be popular?

To begin with, we learned very quickly that the point of that opening gambit was not to create fear, but rather to deliver a relatively simple message; namely, that learning is serious business and there is never—never—an excuse for doing less than your best. We learned almost immediately that Frank always gave us his best. His endless hypotheticals—always beginning, “Now suppose”—were carefully constructed to elaborate first this facet then that facet of each case or problem in the book. It was obvious that much planning had gone into the design and arrangement of those hypotheticals. Indeed we may have come to rely too much on the structure imparted to casebook material by his hypotheticals. There is the true story of a student who took a legal history seminar from Frank. He became befuddled when Frank asked him a typical sort of open-ended question about the material he had been

reading. After looking nonplused for almost a minute the student finally asked, "Could you 'suppose' me one?"

We learned that Frank had unlimited patience with students who were struggling with difficult issues—outside as well as inside the classroom. "Have you tried this? Have you tried that? Suppose this. Suppose that." Every kind of help was available—except a direct answer. No matter what, the student ultimately would leave convinced that he had figured out the answer to his own question and had needed only a little guidance to point him in the right direction.

And so we learned that Frank was genuinely interested in teaching and worked very hard to make sure we learned what we should. For that we were willing to forgive him any sin, including the unpardonable (according to myriads of articles in the *Journal of Legal Education*) sin of demanding that we work hard too.

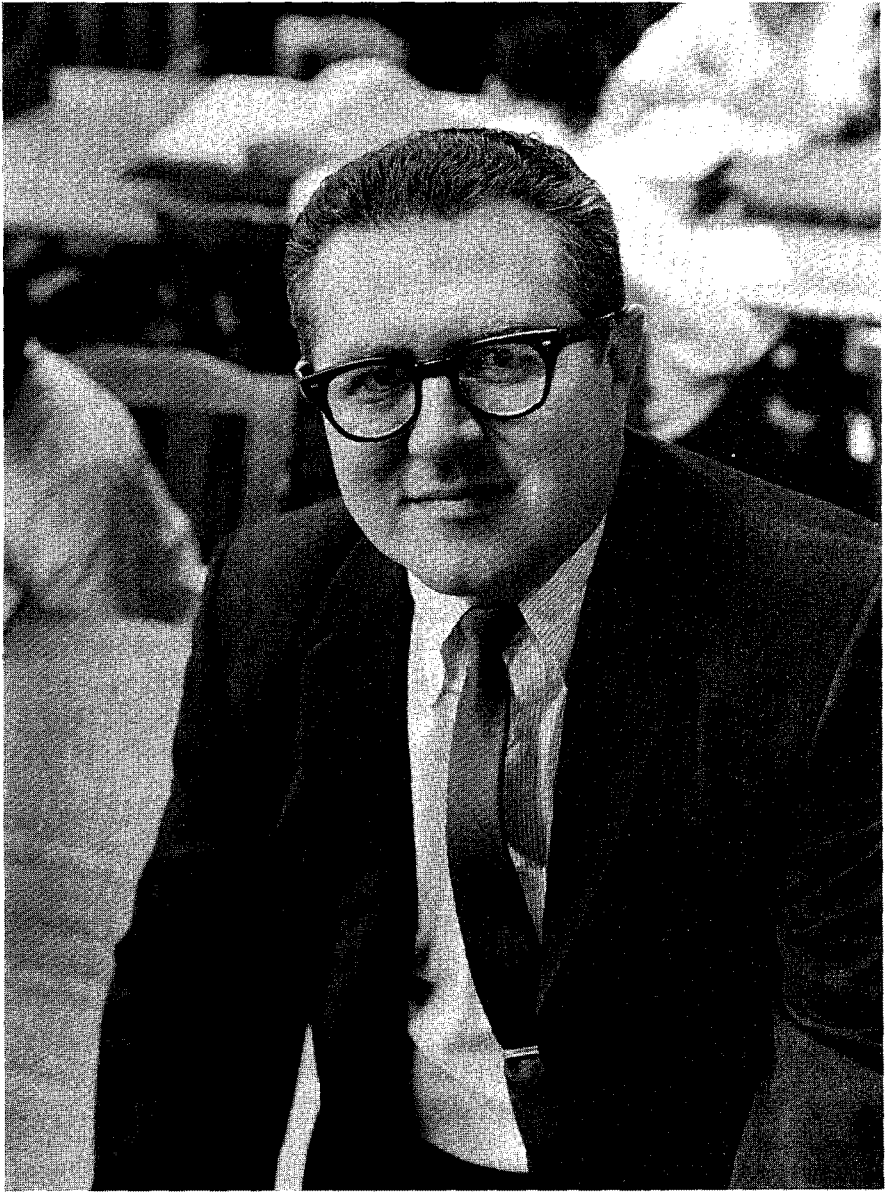
Not surprisingly, Frank's solicitude for others includes his younger faculty colleagues. "What are you working on now? How is it coming? Have you read So-and-So's article in the *Whosits Law Review*?" (No one I know or have ever met reads as much law review literature, in fields outside as well as inside his own.) He pretends to enjoy reading drafts of his colleagues' articles and filling the margins with comments, queries, and suggestions that are invariably helpful.

Nor is his solicitude limited to affairs of the mind. No person joins this faculty who is not regularly invited to lunch by Frank. Indeed, the Miller lunch entourage is legendary. Having arranged a group of three or four via telephone, he will knock on every closed door, and stop at every open one, on the way to the elevator to ask the occupant to join the group. It is not unknown for a two-person lunch to become a ten-person event.

Frank is also the best "kidee" (as one of our colleagues put it) around. At least half the wisecracks uttered by members of this faculty are aimed at him, doubtless because he absorbs them with such good grace. Even students get into the act. Two, feigning wide-eyed innocence, asked him, as he was putting on weight some years ago, whether they could teach him how to tie a bigger Windsor knot to cover up the widening gap between the ends of his shirt collar that could no longer be buttoned.

For the past year we have been asking each other: What will we do when Frank retires? Who will get the lunch group together? Who will watch over the newcomers? Who will . . . ?

How I wish these were still hypothetical questions!



Professor Frank Miller in January Hall, the former site of the School of Law (1965).