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In Memory of Irving Younger— Lawyer, Judge, and Teacher

Henry Woods*

The description *Renaissance man* is grossly overused in today's parlance. It is not overused or fulsome when applied to Irving Younger. I became acquainted with him when less than two years remained of an incredibly rich and eventful life. United States Circuit Judge Myron Bright, an alumnus of this law school, had always been intrigued by a case my partner and I had tried in the Arkansas United States District Court. We had secured a jury verdict, but the district judge granted judgment notwithstanding the verdict.¹ Judge Bright wrote the Eighth Circuit opinion restoring our verdict. He conceived the idea of streamlining this case into a one-day seminar. There would be direct and cross-examination of the key witnesses, opening statements, closing arguments, appellate arguments, and critiques.

Judge Bright invited Irving and me to play the roles of trial and appellate counsel, knowing well that Irving's vast reputation would guarantee a full house. Indeed, it worked out just this way. We played to packed houses in many large cities in the midwest. When Irving became too ill to carry on, we had to cancel dates in Tampa and Miami.

These programs gave me a rare chance to spend unforgettable days with a man who had lectured before more judges, lawyers, and law students than any other individual in history. There may have been greater lawyers, law teachers, and jurists, but no other combined all of these capabilities with such prodigious results. I do not propose to discuss these abilities. They are well known: the mastery of the practice and theory of cross-examination and the histrionic talent, so effective in the courtroom that it could have made him a success on the stage. Could any viewer of his *tour de force* "The Trial of Alger Hiss,"

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1. *Marshall v. Humble Oil & Refining Co.*, 459 F.2d 355, 356 (8th Cir. 1972).

wherein he played all the parts in this historic trial, doubt his consummate acting talent!

I was prepared for an association with a superb lawyer and law teacher, having seen his classic videotapes on evidence. I was unprepared for the breadth of his interests. At a dinner in St. Louis on the eve of our seminar, he revealed his vast knowledge of two subjects that had always attracted me, baseball and the United States Civil War.

Until late that night we talked about the fabled Brooklyn Dodgers of 1947—Roger Kahn's "Boys of Summer," the team of Jackie Robinson, Pee-wee Reese, and Pete Reiser—as well as the great Yankee teams of Ruth, Gehrig, and Dickey, and the Giants of the Carl Hubbell-McLoff era. These were the athletic heroes of a youngster growing up in New York. Irving could recall their batting averages, their weaknesses, their personal foibles. He could recreate the excitement of the Dodger-Giant games at old Ebbets Field in Brooklyn.

On another occasion, somehow our discussion reached the Civil War. I will never forget his brilliant analysis of how McClellan lost the opportunity to destroy Lee's army at Antietam when a Union soldier found a copy of Lee's pre-battle orders.

Saving perhaps the law, Irving's consuming passion must have been literature. I know that his academic career began in this field after he obtained a graduate degree from Harvard. One of the memorable evenings of my life was a beautiful dinner party he and Judith gave for Judge Bright, several members of the University of Minnesota Law School faculty, and me. The food was excellent and the conversation scintillating. But what impressed me most was Irving's collection of first editions of Dickens and Faulkner, two of his favorite authors. Many of Dickens's great novels were first serialized in London's Penny Press. There they were in Irving's library just as they had been sold on the Strand.

Irving's affection for literature is evident in his absorbing lecture on the litigation concerning James Joyce's *Ulysses*. I first heard him give this lecture to the faculty at St. Louis University and persuaded him to repeat it at the Little Rock campus of the University of Arkansas. I would not have believed that a speaker could hold an audience spellbound for two hours. I saw Irving perform such a feat on these two occasions.

In 1897 while on the Supreme Judicial Court of Massachusetts, Oliver Wendell Holmes delivered a eulogy for his former

partner, George Shattuck, a famous trial lawyer. His words could so aptly apply to Irving Younger:

I know of no true measure of men except the total of human energy which they embody . . . from Nansen's power . . . to resist cold, up to his courage, or to Wordsworth's power to express the unutterable, or to Kant's speculative reach. The final test of this energy is battle in some form—actual war—the crush of Arctic ice—the fight for mastery in the market or the court. Many of those who are remembered have spared themselves this supreme trial, and have fostered a faculty at the expense of their total life. It is one thing to utter a happy phrase from a protected cloister; another to think under fire—to think for action upon which great interests depend.²

Irving Younger did not spare himself this supreme trial. My admiration for him was and is unbounded. When Judge Bright called and gave me the sad news that his condition was worsening, I sent him a photograph from one of our moot trials that caught him in a characteristic pose during a jury argument. I wrote and asked him to autograph it. It came back by return mail a few days before his passing. That picture now occupies a most prominent place in my chambers.

2. O.W. HOLMES, *George Otis Shattuck*, in *THE OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOLMES* 95 (M.D. Howe 1962).

