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Irving Younger

Jon R. Waltz*

I have been putting off trying to write this. My heart is not in it or, more accurately, my heart is too much in it. I detest having to say good-bye to Irving Younger, who was my admired friend for a quarter of a century. And so I am going to be brief although there is a multitude of things that I could say about the memory of this fascinating man, I am so saddened by the circumstances that call for saying them so soon. I simply do not want Irving Younger to be gone. He was unique.

I suppose that I have been asked to contribute to this memorial issue of the *Minnesota Law Review* because it was thought that I am equipped to comment on Irving Younger's contribution to legal scholarship, particularly in the areas of evidence and litigation procedure. I am, but so are many others in equal or greater measure, and I would prefer to leave to them an assessment of Irving's written work, which was prodigious. There are two reasons for my bypassing of Irving's publication record: his scholarly efforts, it seems to me, are not the most significant components of his legacy—I will speak of his true importance—and, in any event, I wish in the main to speak of Irving on a more personal level, given our years of friendship.

I first got to know Irving Younger when he was a New York City practitioner; we sat on the same side of the courtroom in a multiple party lawsuit. Still a practitioner myself, I next encountered Irving when, in what can only be described as some happy sort of political miracle, he went on the bench. When both of us abandoned the courtroom for the classroom, our paths crossed with increasing frequency, often while we were on the road with a continuing legal education program. It will surprise no one who knew Irving that I always enjoyed being with him. We had fun and we got to know each other pretty well.

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If I were allotted only one word with which to describe Irving, I suppose I would choose "dynamic," for that he surely was, and anyone who ever saw him at the podium knows that I am right. Of course, no single adjective can carry the burden of complete description; Irving Younger was a complex man. It says everything and nothing about the man to call him multifaceted (it would only confirm that I am a master of the hackneyed phrase), so let me have a few more words. All of his thousands of friends and students will agree with some or all of what follows.

Irving Younger was gregarious (he thought other lawyers were the best of companions), slyly witty, a great storyteller, disputatious to the point of combativeness but never cruel, in all ways honest, self-confident but never arrogant, sometimes impatient but never intolerant, a masterful showman but no phony. He could turn a phrase; unlike many lawyers, he could also write a short declarative sentence in plain English with a period at the end (in a lengthy article or a short letter).

I said that I would speak of Irving Younger's true importance. Above all, he was a consummate teacher of both the experienced and the inexperienced. Old lawyers like me will speak as enthusiastically of Irving Younger's teaching skills as, I feel certain, will young students at the University of Minnesota Law School. The thousands he taught will carry his name forward.

Great talker that he was, Irving was a rapt listener too. He loved other lawyers' war stories. In them he found support for his own views about the practice of law, especially trial law. Although for pedagogical purposes he was forever compiling lists—catchy ones, like his "Ten Commandments of Cross-Examination"—his one overriding rule was that most of the folkloric rules of litigation were made to be ignored. For example, he began to lose faith in the axiom that you never pose a question on cross examination to which you don't already know the answer. His faith in it was undermined by a recollection of Charles Bellows, a celebrated Chicago criminal lawyer. Bellows had been confronted by an identification witness who had testified with impressive certitude. Bellows arose for cross and, having no hint of what answer would be elicited, inquired, "Have you ever identified anyone else?" When the answer came "Oh, yes," Charlie knew he was on to something. It developed on further questioning that during a photograph review at police headquarters the witness had with equal certitude

identified five other people as the perpetrator. Bellows's client was acquitted, of course.

Irving Younger also savored the running argument between John Kaplan and me over our favorite objection, to be employed to gain time when we could not immediately articulate the applicable exclusionary rule of evidence. Kaplan favored, "Object, your Honor, that's not fair!" I preferred mine: "Object, your Honor, he can't do that!"—sometimes followed by "and he knows it!" Irving wanted to know whether I had sense enough to subside into silence, leaving the judge to figure out why my opponent couldn't do that.

Well, I bring to an end this footnote to a full life. It comes down to this: Irving Younger was interesting. There are a lot of lawyers, and many a law teacher, about whom the same cannot be said. So a huge and beguiled band of friends and followers listened to him and, therefore, learned.

Hail and farewell.

So say we all.

