

2012

Guide to the Archival Collection of Judge Roger J. Miner '56

New York Law School

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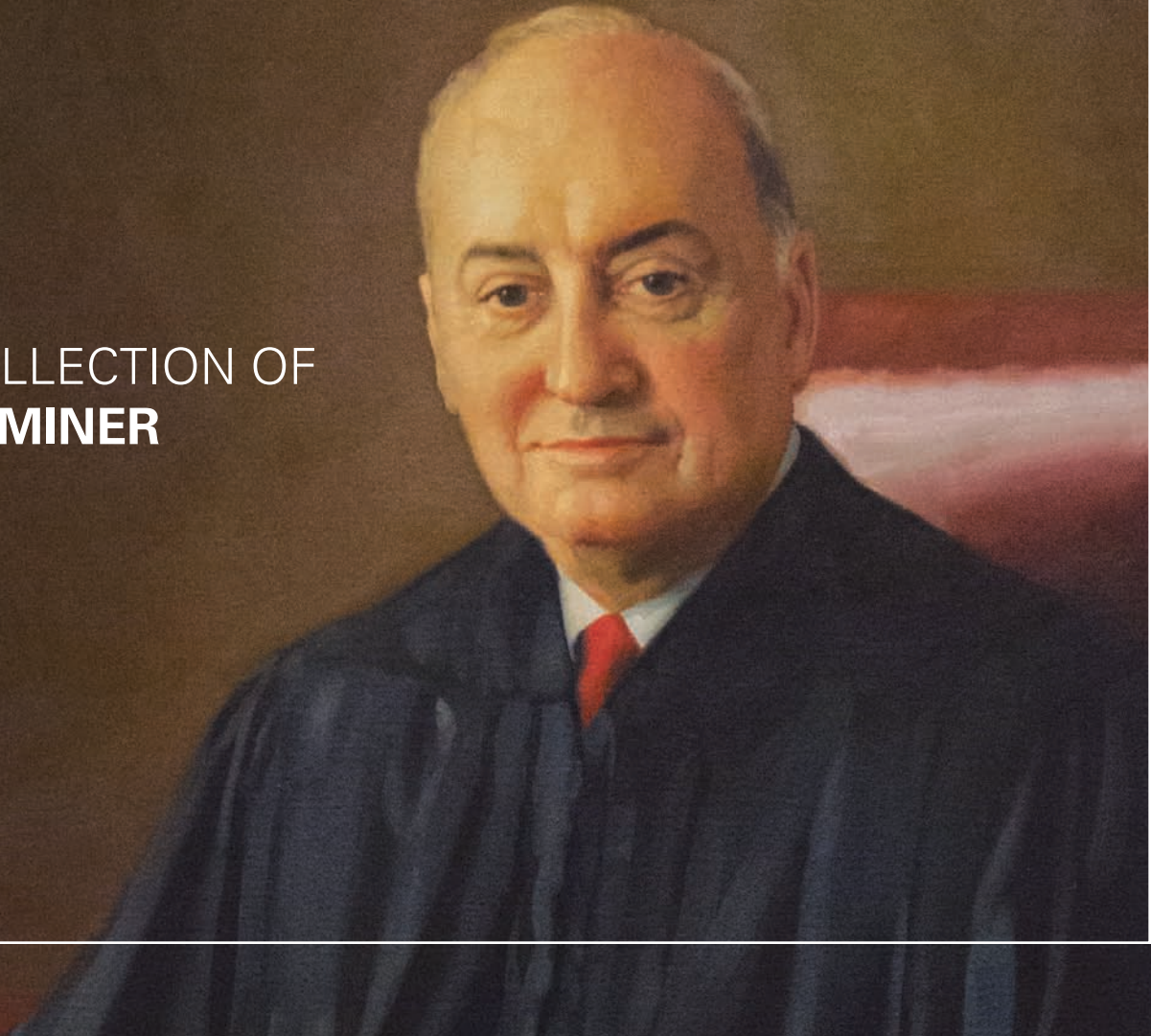
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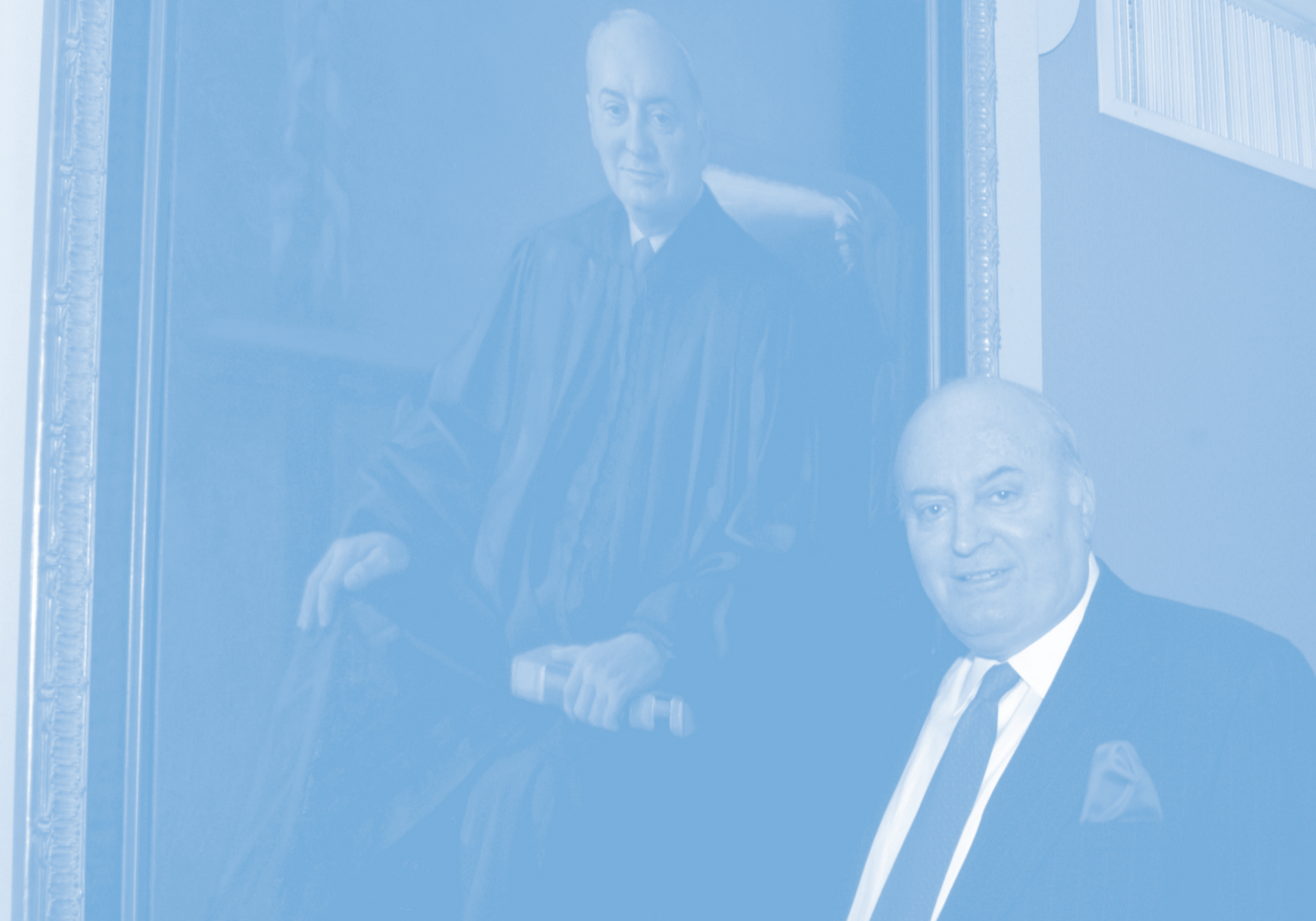
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THE ARCHIVAL COLLECTION OF
JUDGE ROGER J. MINER

1981–2012

**Dedication of
The Honorable Roger J. Miner '56
Reading Room**
July 10, 2013
New York Law School
The Mendik Library





INTRODUCTION

Judge Roger J. Miner '56, Senior Circuit Judge for the United States Court of Appeals for the Second Circuit, donated his papers to New York Law School's Mendik Library in 1999 with a stated intention to establish a research collection relating to his career for the use and benefit of the students and faculty of New York Law School, other legal scholars, historians, political scientists, journalists, and researchers of all disciplines.

Judge Miner transferred to New York Law School the materials from his tenure as a United States District Judge for the Northern District of New York (1981–1985) between 1999 and 2000. He began the process of transferring materials from his early years on the Court of Appeals in 2011. After Judge Miner's untimely passing on February 18, 2012, his long-

serving judicial assistant Shirley Hicks (who worked with Judge Miner from 1981 through his death in 2012), along with law clerks Matthew Zappen and Alicia Surdyk (NYLS '09), continued the transfer process according to procedures Judge Miner had established. By January 2013, the remainder of Judge Miner's papers, a total of 255 boxes, had been transferred to NYLS. Subsequently, additional papers and materials from Judge Miner's home office in Hudson, New York, were transferred.

New York Law School is extraordinarily fortunate to have been the beneficiary of this gift, which will afford scholars and others researching Judge Miner, his works, or the jurisprudence of the Second Circuit, access to an unparalleled collection of unique material.

[It is] the duty of every good citizen to use all the opportunities, which occur to him, for preserving documents relating to the history of our country.

Thomas Jefferson to Hugh P. Taylor, October 4, 1823, Thomas Jefferson Papers, Manuscript Division, Library of Congress

THE COLLECTION

The vast majority of the collection is composed of materials from Judge Miner's 27 years on the United States Court of Appeals for the Second Circuit (1985–2012), where he served as a Circuit Judge and later as a Senior Circuit Judge. Much of the balance of the collection is composed of materials from Judge Miner's service as a District Judge for the Northern District of New York (1981–1985). There are additional materials relating to Judge Miner's association with New York Law School, his military service, his service as District Attorney for Columbia County (1968–1975), and his years as a New York State Supreme Court Justice (1976–1981).

Although the collection has not yet been fully indexed, there is a detailed index of the contents (at the folder level) of the 255 boxes transferred between 2011 and 2013. There are separate indexes to all of the opinions

Judge Miner authored as both a District and Circuit Judge. There is also a complete index of Judge Miner's speeches and writings. All of Judge Miner's District Court papers (as well as some materials in video format dating from 1985 to 1993) were indexed in 2000. A detailed finding aid titled *The Archival Collection of Judge Roger J. Miner: 1981–1993* is available for those earlier materials.

We expect to continue to expand the indexing of Judge Miner's papers. Over time, we would like to explore options and opportunities for digitizing some or all of the collection. Such an endeavor would be a significant undertaking, the likelihood of which will depend largely on the availability of direct funding, the generosity of donors, and the securing of grants from organizations that support this type of project.

To preserve the past is to give voice to history and thereby to advance the knowledge of mankind.

Judge Roger J. Miner, Address at the Opening of the Second Circuit's Centenary Celebration Exhibit, *Colleagues for Justice: One Hundred Years of the United States Court of Appeals for the Second Circuit* (October 22, 1992)

DESCRIPTIONS OF SELECTED MATERIALS

SPEECHES AND WRITINGS

More than 140 of Judge Miner's articles, speeches, and other writings. Copies of the original items have been arranged numerically in nine volumes of notebooks titled *Speeches and Writings*. Each volume contains a detailed table of contents and a subject index. In cases where a writing was subsequently published, copies of the original as well as the published versions are included in the notebooks. The original files for each item are also available. There are more than 50 published writings.

- The writings and speeches cover topics that include:
 - Legal education
 - Lawyers and the legal profession
 - Law practice
 - The federal courts
 - Federalism
 - Constitutional law
 - Criminal law
 - Intellectual property
 - The federal court system and judicial administration
 - Legal history
 - Military law

- Also included are:

- Commencement addresses
- Keynote addresses
- Eulogies and tributes
- Speeches and remarks at memorial services, induction ceremonies and investitures, and numerous public-service event appearances.

MATERIALS FROM THE COURT OF APPEALS

The files from each of the nearly 4,200 cases in which Judge Miner participated as a Circuit or Senior Circuit Judge, arranged chronologically by an internal case number.

A separately indexed collection of files for each of the nearly 600 opinions Judge Miner authored.

Other major categories of files include:

- Judge Miner's notes and summaries of cases
- Bench memos
- En banc cases
- Motions
- Regular and Non-Argument Calendars

DESCRIPTIONS OF SELECTED MATERIALS (continued)

- Law clerks
- Correspondence
- New York Law School
- Moot Court judging
- Law teaching
 - New York Law School
 - Albany Law School
 - Arizona State University College of Law
 - Attorney General’s Advocacy Institute
 - Practising Law Institute
- Unpublished writings
- Humor collection
- Biographical information
- Daily record and appointment books
- Articles and news reports
- Bar and other professional associations
- Remarks and addresses (non-indexed)

MATERIALS FROM THE DISTRICT COURT

Sentencing Files

Files covering the sentencing phases of 309 criminal proceedings in the District Court between 1981 and 1985. The files contain, among other items, presentence reports, briefs, exhibits, recommendations, hundreds of pieces of original correspondence, and Judge Miner’s sentencing and related notes.

Decisions

Original copies of 449 of Judge Miner’s District Court decisions issued between 1981 and 1985, arranged in reverse chronological order and indexed according to subject matter. The decisions span a wide range of subject matter, including antitrust, bankruptcy, civil rights, criminal law, discovery, employment discrimination, habeas corpus, jurisdiction, labor law, patents, securities, social security, tax, and trademark law.

Miscellaneous Files

Caseload statistics reports, memoranda, Judge Miner’s biographical information, material relating to law clerks and prospective law clerks, correspondence with counsel and other judges, miscellaneous correspondence, and plea agreements.

Chambers Files

Copies of briefs, trial exhibits, jury charges, correspondence, and Judge Miner's notes from 115 cases in the District Court.

Sample Jury Charges

Sample jury charges from matters tried before Judge Miner in the District Court between October 1981 and September 1985, arranged according to subject matter. Many of the jury charges are handwritten or annotated directly by Judge Miner.

Minutes of the Court

The transcribed stenographic Minutes of the Court provide a day-to-day journal of District Court sessions over which Judge Miner presided. The minutes cover trials (civil and criminal), arguments of motions, and conferences with counsel.

Record Books

Twenty-five Daily Record Books containing Judge Miner's notes and observations in cases tried before him. These books, containing thousands of pages, include Judge Miner's own indexes and summaries of testimony and arguments.

VIDEOS

There are 22 VHS tapes, all of which have been copied and transferred to archival DVDs. The DVDs are available for viewing. Among the recordings are:

- Judge Miner's Investiture as both a District and Circuit Judge.
- Judge Miner's July 7, 1985 United States Senate Confirmation Hearing.
- Miscellaneous television news clips containing speculation about Judge Miner's appointment to the Supreme Court of the United States.
- *A Conversation with The Honorable Roger J. Miner* (three DVDs) (a professional and personal oral history of Judge Miner produced by the Second Circuit Court of Appeals and the Federal Bar Council).
- Speech—*Federal Courts, Federal Crimes and Federalism*, delivered before The Federalist Society, Washington, D.C. (September 18, 1986).
- Speech—*Preemptive Strikes on State Autonomy: The Role of Congress*, delivered before The Heritage Foundation as part of the U.S. Constitution Bicentennial Lecture Series, Washington, D.C. (February 18, 1987).
- "Literacy Volunteers Project: Reading to Kindergarten Children at the Greenport School," Hudson, New York (March 14, 1990).
- Commencement address—*Ring the Bell*, and receipt of Honorary LL. D. Degree, Syracuse University College of Law (May 20, 1990).

SELECTED SPEECHES AND PUBLISHED ARTICLES

- *A Judge's Advice to Today's Law Graduates*, 57 N.Y. St. B. J. 6 (November 1985).
- *Victims and Witnesses: New Concerns in the Criminal Justice System*, 30 N.Y.L. Sch. L. Rev. 757 (1985).
- *Preemptive Strikes on State Autonomy: The Role of Congress*, 99 The Heritage Lectures (1987).
- *Federal Courts at the Crossroads*, 4 Const. Comment. 251 (1987).
- *The Tensions of a Dual Court System and Some Prescriptions for Relief*, 51 Alb. L. Rev. 151 (1987).
- *Federal Courts, Federal Crimes and Federalism*, 10 Harv. J. L. & Pub. Pol'y 117 (1987).
- *Research in Judicial Administration: A Judge's Perspective*, 12 Jus. Syst. J. 8 (1987).
- *The Duty to Criticize the Courts (I)*, 71 Judicature 134 (1987).
- *The Don'ts of Oral Argument*, 14 Litigation 3 (Summer 1988), reprinted in American Bar Association, Section of Litigation, Appellate Practice Manual 263 (Priscilla Anne Schwab ed., 1992).
- *Lawyers Owe One Another*, Nat'l L.J., Dec. 19, 1988, at 13, col. 1.
- *Exploiting Stolen Text: Fair Use or Foul Play?*, 37 J. Copyright Soc'y 1 (1989).
- *Confronting the Communications Crisis in the Legal Profession*, 34 N.Y.L. Sch. L. Rev. 1 (1989).
- *A Profession at Risk*, 21 Trial Law. Q. 9 (Spring 1991), reprinted in 26 Int'l Soc'y of Barristers Q. 333 (1991).
- *Justice Harlan and the Bill of Rights: A Dichotomy in Constitutional Analysis*, 36 N.Y.L. Sch. L. Rev. 75 (1991).
- *The United States District Court for the Northern District of New York — Its History and Antecedents*, Second Circuit Redbook 1984–85 Supplement, reprinted in Federal Bar Foundation, United States Courts in the Second Circuit 62 (1992).

- *Crime and Punishment in the Federal Courts*, 43 Syracuse L. Rev. 681 (1992).
- *One Hundred Years of Influence on National Jurisprudence: Second Circuit Court of Appeals Decisions Reviewed by The United States Supreme Court*, Federal Bar Foundation, United States Courts in the Second Circuit 138 (1992).
- *Twenty-Five 'Dos' for Appellate Brief Writers*, 3 Scribes J. of Legal Writing 19 (1992).
- *Advice and Consent in Theory and Practice*, 41 Am. U. L. Rev. 1075 (1992).
- *Federal Court Reform Should Start at the Top*, 77 Judicature 104 (1993).
- *Identifying, Protecting and Preserving Individual Rights: Traditional Federal Court Functions*, 23 Seton Hall L. Rev. 821 (1993).
- *Considering Copyright Crimes*, 42 J. Copyright Soc'y 303 (1995).
- *The Reception of Foreign Law in the U.S. Federal Courts*, 43 Am. J. Comp. L. 581 (1995).
- *Professional Responsibility in Appellate Practice: A View from the Bench*, 19 Pace L. Rev. 323 (1998–1999).
- *Frank X. Altimari — Humanist Judge*, 15 Touro L. Rev. 4 (1999).
- *Common Disorders of the Appendix and their Treatment*, 3 J. App. Prac. & Process 39 (2001).
- *Judicial Ethics in the Twenty-First Century: Tracing the Trends*, 32 Hofstra L. Rev. 1107 (2004).
- *A Significant Symposium*, 54 N.Y.L. Sch. L. Rev. 15 (2009–2010).
- The Yale Biographical Dictionary of American Law, *Augustus Noble Hand* 247; *Charles Hough* 274 (Roger K. Newman, ed., May 2009).
- *"Dealing with the Appellate Caseload Crisis": The Report of the Federal Courts Study Committee Revisited*, 57 N.Y.L. Sch. L. Rev. 517 (2012–2013).

SUPREME COURT REVIEW OF JUDGE MINER'S OPINIONS

Consol. Edison Co. v. Pub. Serv. Comm'n, 93 Misc. 2d 313, 402 N.Y.S.2d 551 (Sup. Ct. Albany County 1978) (PSC's order banning utility from using bill inserts to promote utility's position on "controversial matters of public policy" constituted an impermissibly vague restriction upon commercial speech in violation of the First and Fourteenth Amendments), *rev'd*, 63 A.D.2d 364, 407 N.Y.S.2d 735, *aff'd*, 47 N.Y.2d 94, 417 N.Y.S.2d 30 (1979), *rev'd*, 447 U.S. 530 (1980) (agreeing with Judge Miner's holding that bill inserts ban was unconstitutional).

Beer Inst. v. Healy, 849 F.2d 753 (2d Cir. 1988) (amended beer price affirmation provisions of Connecticut Liquor Control Act violated the commerce clause and did not represent a valid exercise of state's power under the Twenty-first Amendment), *aff'd*, 491 U.S. 324 (1989).

Wilmington Convalescent Home Inc. v. Conn. Dep't of Income Maint., 850 F.2d 50 (2d Cir. 1988) (Chapter 7 trustee's adversarial proceeding against the state of Connecticut did not fall within Bankruptcy Code's waiver of sovereign immunity and was therefore barred by the Eleventh Amendment), *aff'd sub nom. Hoffman v. Conn. Dep't of Income Maint.*, 492 U.S. 96 (1989).

Simon & Schuster Inc. v. Fischetti, 916 F.2d 777 (2d Cir. 1990) (statute requiring earnings from exploitation of a crime to be escrowed to assure payment of civil judgments later recovered by victims was consistent with the First Amendment because it was narrowly tailored to the state's strong interest in preventing criminals from profiting from their crimes while victims were in need of compensation), *rev'd sub nom. Simon & Schuster Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105 (1991).

Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist., 959 F.2d 381 (2d Cir. 1992) (because schools were limited forums not open to religious uses by policy or practice, school district did not violate the First Amendment when it refused to allow church to use school facilities during nonschool hours to show religious film series), *rev'd*, 508 U.S. 384 (1993).

Harris Trust & Sav. Bank v. John Hancock Mut. Life Ins. Co., 970 F.2d 1138 (2d Cir. 1992) (holding, inter alia, that trustee of retirement trust did not have a fiduciary responsibility as to guaranteed benefits policy group annuity contract, but was a fiduciary as to nonfixed, nonguaranteed obligations subject to fluctuation), *aff'd*, 510 U.S. 86 (1993).

Quill v. Vacco, 80 F.3d 716 (2d Cir. 1996) (New York statutes criminalizing assisted suicide violate the Equal Protection Clause because they are not rationally related to any legitimate state interest to the “extent they prohibit a physician from prescribing medications to be self-administered by a mentally competent, terminally-ill person in the final stages of his terminal illness” and therefore treat such persons differently from those who terminate life support at the request of terminally ill), *rev’d*, 521 U.S. 793 (1997).

Good News Club v. Milford Cent. Sch., 202 F.3d 502 (2d Cir. 2000) (school’s policy limiting use of its facilities for after-school activities did not constitute unconstitutional viewpoint discrimination and was not unreasonable where the after-school activities were “quintessentially religious” and fell “outside the bounds of pure ‘moral and character development’”), *rev’d and remanded*, 533 U.S. 98 (2001).

Hallock v. Bonner, 387 F.3d 147 (2d Cir. 2004) (holding interlocutory order denying dismissal based on Federal Tort Claims Act’s judgment bar appealable under the collateral order doctrine), *vacated and remanded sub nom. Will v. Hallock*, 546 U.S. 345 (2006).

Litera scripta manet—The written word endures

SELECTED NOTABLE OPINIONS BY JUDGE MINER

Washburn v. Abrams, No. 83 Civ. 1711 (N.D.N.Y. Jan. 20, 1984) (denying plaintiff anti-abortion advocate's request to be appointed legal guardian of infant born with multiple, serious congenital birth defects based on state court's previous finding that infant's parents were competent natural guardians, and imposing \$500 sanction on plaintiff pursuant to Fed. R. Civ. P. 11).

Allanson v. Clinton Cent. Sch. Dist., No. 84 Civ. 174 (N.D.N.Y. May 10, 1984) (parents did not have to belong to an organized religion to oppose on religious grounds school system's mandatory immunization requirement for their children).

DeCintio v. Westchester County Med. Ctr., 807 F.2d 304 (2d Cir. 1986) ("voluntary, romantic relationships cannot form the basis of a sex discrimination suit under either Title VII or the Equal Pay Act"), *cert. denied*, 484 U.S. 825 (1987).

In re "Agent Orange" Prod. Liab. Litig., 818 F.2d 216 (2d Cir. 1987) (reversing district court's approval of a fee-sharing agreement entered into by the Plaintiffs' Management Committee (PMC) that would provide a threefold return on investment to PMC members who advanced funds for litigation), *cert. denied*, 484 U.S. 926 (1987).

United States v. Starrett City Assocs., 840 F.2d 1096 (2d Cir.) (use of "rigid racial quotas of indefinite duration to maintain a fixed level of integration at [plaintiff's housing complex] by restricting minority access to scarce and desirable rental accommodations otherwise available to them" prohibited by Title VIII), *cert. denied*, 488 U.S. 946 (1988).

New Era Publ'ns Int'l v. Henry Holt & Co., 873 F.2d 576 (2d Cir. 1989) (holding in copyright infringement action against publisher of L. Ron Hubbard biography that extensive use of Hubbard's published and unpublished writings did not constitute fair use and that, although damages were warranted, injunctive relief was barred by laches), *cert. denied*, 493 U.S. 1094 (1990).

Collins v. Promark Prods. Inc., 956 F.2d 383 (2d Cir. 1992) (New York law applied in a personal injury action where the place of the accident, a previously submerged portion of Ellis Island west of the boundary between New York and New Jersey, was found to be "a part of New York").

Loper v. New York City Police Dep't, 999 F.2d 699 (2d Cir. 1993) (affirming district court's holding that New York statute criminalizing loitering, remaining, or wandering "about in a public place for the purpose of begging" violated the First Amendment).

Bourne v. Walt Disney Co., 68 F.3d 621 (2d Cir. 1995) (finding that the instrument conveying Disney's copyrights in compositions, but providing Disney with a license to use the compositions in "motion pictures" made by Disney, was broad enough to cover videocassettes, and rejecting plaintiff's contention that "Disney's sale of videocassettes constituted infringement of plaintiff's exclusive right to vend"), *cert. denied*, 517 U.S. 1240 (1996).

Brown & Williamson Tobacco Corp. v. Pataki, 320 F.3d 200 (2d Cir. 2003) (holding New York statute prohibiting "cigarette sellers and common and contract carriers from shipping and transporting cigarettes directly to New York consumers" did not violate the commerce clause).

Viet. Assoc. for Victims of Agent Orange v. Dow Chem. Co., 517 F.3d 104 (2d Cir. 2008) (holding that district court lacked jurisdiction under the Alien Tort Statute to consider the claims of a Vietnam nonprofit group and Vietnam nationals for injuries allegedly sustained from exposure to herbicides during the Vietnam War, that state law claims were barred by the government contractor defense and that the district court did not abuse its discretion when it denied extraterritorial injunctive relief), *cert. denied*, 555 U.S. 1218 (2009).

City of New York v. Beretta U.S.A. Corp., 524 F.3d 384 (2d Cir. 2008) (upholding constitutionality of the Protection of Lawful Commerce in Arms Act (which prohibited certain actions against firearms manufacturers and sellers arising from criminal or unlawful misuse of a firearm) and directing dismissal of complaint "seeking injunctive relief and abatement of alleged public nuisance" as barred by act), *cert. denied*, 129 S. Ct. 1579 (2009).

1934

Born, Hudson, New York



LL. B. New York Law School *cum laude*

Admitted to New York Bar

1956

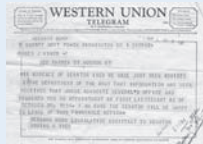


Admitted to Bar of the Republic of Korea

1958

1956-1959

U.S. Army—First Lieutenant, Judge Advocate General's Corps



1959

1961

Corporation Counsel, Hudson, New York

1961-1964

1964

Assistant District Attorney, Columbia County



Elected District Attorney for Columbia County (serving until 1975)

1968

1976

Elected as one of the youngest Justices of the New York Supreme Court (serving until 1981)



Appointed United States District Judge for the Northern District of New York

1981

1985

Appointed United States Circuit Judge for the Second Circuit Court of Appeals (serving until February 18, 2012)



1986

Reported as short-list candidate for Supreme Court appointment upon Chief Justice Burger's retirement

Adjunct Professor
of Law, NYLS
1986–1996



Honorary LL. D. from
New York Law School

Elected to American
Law Institute

1989

Honorary LL. D. from
Syracuse University
School of Law

1990



Member NYLS
Board of Trustees
1991–1996



Assumes status as
Senior Circuit Judge

1997

Faculty Associate
at Arizona State
University College
of Law

2002

2004

1987

Reported as short-
list candidate for
Supreme Court
appointment upon
Justice Powell's
retirement



1989–1990

Reported as short-
list candidate for
Supreme Court
appointment
upon Justice Brennan's
retirement



1991

1992

Awarded Ellis
Island Medal of
Honor



1996

Honorary LL. D.
from Albany Law
School

1997–2002

Adjunct Professor
of Law, Albany Law
School

2012

Awarded NYLS's
President's Medal
(posthumously)



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