2004

Book #25

Roger J. Miner '56

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Dear Roger:

I read with pleasure the New York Law School magazine reporting on the donation of your papers and the receipt of your portrait. Congratulations on this significant event. I especially enjoyed your account of the early years, and the role of your father.

Best wishes to Jackie.

Best regards,

Jon O. Newman
The Honorable Roger J. Miner  
One Merlin’s Way  
Camelot Heights  
Hudson, NY 12534

Dear Roger,

I loved reading the material in In Brief (Fall/Winter 2003) on the ceremony at which your portrait was unveiled at New York Law School. I especially enjoyed reading your own remarks, which were a terrific introduction to your family, including your official family, and your family history, from the days of the Emperor Franz Josef to the present. Your grandmother was clearly right on Franz Josef: the Austro-Hungarian Empire, like the Ottoman Empire, as I’ve learned from the parents and grandparents of my Jewish friends in deepest Queens and at Columbia, and from my own reading, were both, in the familiar phrase, “Good for the Jews.” Your passing asides were delightful; I could not agree more about medieval Icelandic dispute resolution. That’s a subject that cries out for a simple, declarative, “Actually, I’m not interested”!

Congratulations to you and your favorite politician on this great, and well-deserved, honor at your alma mater.

With best personal wishes, as ever, for you and for Jackie,

Sincerely,

José A. Cabranes

141 Church Street, New Haven, Connecticut 06510
May 3, 2004

Judge Roger J. Miner

VIA FAX

Dear Roger,

I just saw the New York Law School magazine dedicated to you. That is just wonderful. You are a great man and a great judge and I am proud to be your friend.

Best always,
May 4, 2004

Senior Judge Roger R. Miner
United States Court of Appeals, Second Circuit
Thurgood Marshall Courthouse
40 Foley Square
New York, New York 10007

Dear Judge Miner,

I just wanted to send a letter to say again how much I enjoyed your class. While intimidated at first, I quickly warmed to your style and wish I could take more classes from you but understand your eagerness to return home. When I signed up for Federal Crimes the instructor’s name was not given and I honestly mean it when I say I think we all got lucky when you agreed to take the class. I hope that you arrived back in New York safely and in good health. As a token of my appreciation, I have enclosed a penny, slightly changed from its original form, a possible violation of 18 U.S.C. § 331. Just for good measure I would like to state for the record that (1) no one has ever been prosecuted under this statute and (2) I did not mutilate this penny for the purpose of using it as currency. Enjoy it, smashed especially for you by me at the Wildlife World Zoo.

Thanks again,

Melissa Schaffer

13234 West Ashwood Drive • Sun City West, Arizona • 85375
Phone: 623.975.4467 • Cell: 480.650.9072
May 9, 2004

Honorable Roger J., Miner
US Court of Appeals

Dear Roger,

I just read the magazine of New York law school and write to congratulate you on a most deserved and wholly wonderful tribute. It is an honor to be your colleague, I look forward to seeing you soon. Warm regards.

Bob
Dear Judge,

Dean Matsasen was kind enough to forward to me a copy of the Brief, the New York Law School magazine edition that featured you.

It looked as though it was a quiet event and I am sorry it couldn't be there. In any event, I particularly
I liked your statement about law school professors and how they should be training lawyers, not psychologists, sociologist, etc. I couldn't agree with you more!

Congratulations again on the event. I hope you and your family are doing well.

Best Regards,
Will
25 years ago in the Register-Star

Memorial Day parades and services were held throughout Columbia County yesterday, which in 1979, fell on a Wednesday. A parade in Philmont stepped off early in the morning, followed by services with Russell Robertson, who had been seriously wounded at Iwo Jima, as the main speaker. At Chatham, U.S. Representative Gerald Solomon spoke at the Chatham cemetery to honor the war dead. Members of Jennings Willets American Legion Post 346 of Germantown laid wreaths on World War I and World War II monuments, as well as upon the grave of a Civil War veteran. Among other reported services were those at the Kinderhook Square, in Stuyvesant Falls and at Wortman Square in Hudson where State Supreme Court Justice Roger Miner was the featured speaker.
And the sunlight clasps the earth,
And the moonbeams kiss the sea;
What are all these kissings worth,
If thou kiss not me?

Melissa Mary Mathis
and
Lawrence Henry Frank
invite you to share their joy
when they exchange wedding vows
on Saturday, the fifth of June
Two thousand and four
at half past four in the afternoon
Montgomery Place
Annandale-on-Hudson, New York
Reception to follow ceremony
Dear Judge,

I can't thank you enough for performing my wedding ceremony. After spending such an amazing year in your chambers, it is so special to be married by someone for whom I have such deep respect and admiration. Thank you for making this special day even more special.

With my most heartfelt gratitude, Melissa

Dear Judge & Mrs. Miner,

Thank you so much for the absolutely beautiful platter. We love it so much and are looking forward to giving our take out menus a rest and actually cooking at home. We will use the platter at our very first dinner party! Love, Melissa & Larry
June 3, 2004

Dear Roger:

Dean (and President) Matasar of New York Law School was good enough to send me the recent issue of the School’s magazine (In Brief) with your picture gracing the cover. I read with great interest about the Law School’s unveiling of your portrait, the formal acceptance of your papers and the celebration of your career. I was particularly moved by your remarks about your family, your own education and your feelings about the Law School. Congratulations on this fine and well-deserved honor.

Warmest regards to you and Jackie,

Sincerely,

Honorable Roger J. Miner
Circuit Judge
United States Courthouse
445 Broadway, Suite 414
Albany, New York 12207
Dear Judge Miner:

I realized the other day that I have violated the cardinal rule of our Career Services Office: I never accepted your generous clerkship offer in writing. I hope that this much too late letter will suffice. Additionally, as I recently learned (or remembered rather) in my bar review class, our oral agreement would be void under the statute of frauds absent a writing. I hope this now justifies the time and money...mostly money...that I have spent studying for the bar.

In any event, I wanted to write to express my great appreciation, not just for the amazing opportunity to clerk for you, but also for the semester teaching me about federal crimes (and the far too kind grade that I received). But, as much as I learned about that topic, I wanted to thank you more for your closing words to the class and the perspective you shared about a life in the law. Looking back on the mere three years of my law experience, I realize my most vivid memories are not about my in class experiences, but rather some of "my" pro bono clients.

I am hoping to make it up to New York in early August. If I am able to do so, I hope you would not mind my stopping by to visit the courthouse. Before then (hopefully), my law school transcripts will be finalized and I will be sending along an updated resume for your records.

In any event, I look forward to seeing you next year, if not much sooner.

Sincerely,

Paul Avelar
One W Campbell Ave, #1199
Phoenix, AZ 85013

June 21, 2004

P.S. – Please thank also you wife for the kind words regarding my thesis. I wish that I had met her before I wrote it. I think it would have come out much better.
June 21, 2004

Dear Judge Prince,

I want to thank you for making Melissa’s marriage ceremony a very special one. It meant so much to her having you as the person who would pronounce her and Larry as wife and husband. I especially enjoyed your “life sentence” and I hope they carrying out that sentence to the fullest.

In spite of a few hiccups, all went well. It was a bit of a gamble to go ahead with the outdoor ceremony, but I’m glad it worked that way. You were a good agent to go along with that decision. They so much wanted an outdoor ceremony facing the scenic view of the Hudson River.

I enjoyed seeing you again and also enjoyed meeting Mrs. Miner. I’m glad you were able to stay for dinner, and I appreciate your making sure the legal documents were

Melissa and Larry will be leaving later this week for their honeymoon trip to Transylvania — not the usual honeymoon destination, but she’s obviously convinced Larry it’s the perfect place to go! Transylvania, here they come.

As I close my note, I do want to say how wonderful it was that you were able to be the officiant at Melissa’s wedding. It was my daughter’s dearest wish.

Many thanks and warmest wishes to both of you,

Edie Mathis
TO: All Colleagues

MEMORANDUM OF CHIEF JUDGE WALKER

Lest there be any question, I released GC's letter of apology, together with my cover memo, to the press with GC's approval.

Needless to say, I am deeply appreciative of GC's letter and his spirit of cooperation during our discussions in which his foremost concern was the interests of the court.

J.M.W.
As some of you may know, Judge Calabresi has been quoted this week in press reports as making off-the-cuff remarks at a lawyers’ conference in Washington, D.C. that have been viewed as a call to oppose the re-election of President Bush because of the Supreme Court’s decision in Bush v. Gore.

Although Judge Calabresi’s remarks were presented as an academic point with various historical analogies, the principal issue his remarks presents has nothing to do with the merits of what he said nor with his intent in saying them. The issue is whether his remarks could reasonably be understood as a partisan political comment. Partisan political comments, of course, are violations of the Code of Judicial Conduct. As Judge Calabresi has acknowledged, his remarks reasonably could be – and indeed have been – so understood, whatever his intent. He has sent me the enclosed letter, which he has urged me to share with the members of the Court.

I am pleased that Judge Calabresi has promptly recognized that his remarks could too easily be taken as partisan and hence were inappropriate, and I urge all members of the Court to exercise care at all times, but especially in an election year, to refrain from any conduct or statements that could reasonably be understood as “political activity” or “publicly endors[ing] or oppos[ing] a candidate for public office.”
The Honorable John M. Walker, Chief Judge  
United States Court of Appeals, Second Circuit  
157 Church Street  
New Haven, CT 06510  

Dear John,  

I write you as Chief Judge to express my profound regret for my comments at last weekend's American Constitution Society Conference. My remarks were extemporaneous and, in hindsight, reasonably could be—and indeed have been—understood to do something which I did not intend, that is, take a partisan position.  

As you know, I strongly deplore the politicization of the judiciary and firmly believe that judges should not publicly support candidates or take political stands. Although what I was trying to do was make a rather complicated academic argument about the nature of reelects after highly contested original elections, that is not the way my words, understandably, have been taken. I can also see why this occurred, despite my statements at the time that what I was saying should not be construed in a partisan way. For that I am deeply sorry.  

I will not take the time here to outline the non-partisan theoretical framework I was trying to develop. In retrospect, I fear that is properly the stuff only of an academic seminar. For, whatever I had in mind, what I actually said was too easily taken as partisan. That is something which judges should do their best to avoid, and there, I clearly failed.  

Again, I am truly sorry and apologize profusely for the episode and most particularly for any embarrassment my remarks may have caused you, my colleagues, and the court.  

You should feel free to share this letter with our colleagues.  

Sincerely,
June 29, 2004

Dear Judge:

I just received in the mail the copy of the picture from the ceremony in your honor at New York Law School last fall. It was great to see the crew together. I enjoyed the whole event and was happy to catch up with a bunch of the former clerks.

Life has been speeding along to an unknown destination. Gillian and Chloe are a handful, in wonderful ways. At 4 and 2, they are having lots of fun together, but also developing their own personalities, mannerisms and eccentricities (they do, after all, take after their father a little). I could not be happier about fatherhood.

Tain left the New York Fed and went to the private sector as an “interest rate strategist on the US Treasuries desk” at Nomura Securities. I am not exactly sure what that mouthful means, but suffice to say that she follows the activities of her old compadres with a keen ear and gives advice on trading strategies. Lots of pressure and work, especially right now with the Federal Open Market Commission meeting.

I hope all is well with you and Jackie. I will give you a call towards the end of July (after a much-needed vacation) so we can make lunch plans. Take care.

All the best,

Lee A. Schneider
July 16, 2004

Hon. Roger J. Miner  
United States Circuit Judge  
United States Court of Appeals  
for the Second Circuit  
United States Courthouse, Room 414  
445 Broadway  
Albany, NY 12207

Dear Judge:

I hope this letter finds you well. I wanted to write to thank you for the fine photograph from the unveiling ceremony, which also reminded me of the wonderful time I had there. It was good to see you and to hear your obviously heartfelt remarks. New York Law School is indeed fortunate to have you as an alum and I am sure they will display your portrait prominently.

Please give my regards to Mrs. Miner.

Best regards,

Christopher P. Malloy
July 30, 2004

Honorable Roger J. Miner  
One Merlin’s Way  
Camelot Heights  
Hudson, New York 12534

Dear “Judge”:

I was very happy to receive a copy of the photograph taken after the unveiling of your portrait at New York Law School. The photograph is a lovely reminder of a memorable evening and it now assumes a prominent place on my window sill along side my family photos.

Seeing myself with you and my fellow alumni brought back many happy memories, and I want you to know that the opportunity to serve as your law clerk has meant a great deal to me, both professionally and personally. I am grateful for all you have done for me.

I hope that Randi, Jordan and I have the opportunity to see you and Jackie in the near future.

All my best to you and Jackie.

Sincerely,

Craig A. Isaacs
Dear Judge Miner:

I thought of you during my recent trip to Poland and wanted to give you a taste of the classic chocolate delicacies that my country has to offer!

Above all, I also wanted to reiterate my deepest thanks to you for giving me the opportunity to work with you in the future.

I worked with Judge Mercure in his Fort Edward Chambers for a couple of weeks this summer and enjoyed my experience immensely. I can only imagine what I will learn working in your chambers!

Please enjoy the dessert!

Respectfully Yours, 
Anna Kaminska
God Bless the United States and "E pluribus unum!"

Best wishes,

Charlie

Ps. Thank you also for the history of the "Mother Court" and the N.D./N.Y. I cherish it and our history. I hope to see more on C-Span.

8/25/04

Dear Judge Miner and Shirley —

Thank you for your kind comments and remembering me at my retirement. It was a very memorable affair. I was always honored to work in public service, especially within the Federal Judiciary and with dedicated people like you.
Dear Fellow Bar Member:

The second meeting of the Columbia County Bar Association for 2004 will be held at 6 p.m., September 30, 2004, at Swoon Bar and Restaurant, 340 Warren Street, Hudson. The business side of the meeting will begin at 6 p.m. sharp and should be concluded by 6:45 p.m. Dinner will be shortly thereafter.

Our guest speaker will be attorney John Dunne, former New York State Senator and counsel to the firm of Whitman, Osterman & Hanna in Albany. John, as a member of the Commission to Promote Confidence in Judicial Elections, was appointed by Chief Judge Judith Kaye to draft proposals for the independent screening of judicial candidates. The Commission made its final report this summer to Judge Kaye concerning new standards for judicial screening. The proposals, if implemented, would change the process dramatically.

One related item to be on the agenda at this meeting is whether the Bar Association wants to establish its own committee to be involved in reviewing the qualifications of judicial candidates in this county.

Also, mark your calendars for October 21, 2004. Second Circuit Court of Appeals Judge and native son, the Hon. Roger Miner, will be at the Columbia County Courthouse for a presentation of his portrait for installation in the Courthouse. We are working on having a Bar Association luncheon to follow the presentation. Details to follow.

Below are your dinner choices. Please let Anthony Buono, association secretary, know about whether you are attending and your dinner choice no later than the end of the business day on Sept. 15th. You may 1) Mail your selection to him at P.O. Box 300, Valatie, NY 12184; 2). Call his office at (518) 758-1979; or 3). E-mail your information to him at anthonybuono@berk.com.

For those of you who may be lapsed members of the association or who wish to join, please send your 2004 dues of $40 payable to the Columbia County Bar Association to Kenneth Esrick, 28 Park Row, Chatham, NY 12037 (518-392-2223). If you wish to attend the September 30th meeting and dinner, please pay your dues as soon as possible.

I look forward to seeing all of you on September 30th.

[Signature]

I will attend the Bar Association Dinner at Swoon on September 30, 2004.

My choice of entree is:

- Chicken Breast
- Pan Seared Skirt Steak
- Wild Atlantic Striped Bass

My choice of dessert is:

- Liquid Dark Chocolate Tartlet
- Light Lemon-Vanilla Cheesecake
Hon. Roger J. Miner, Circuit Judge  
445 Broadway  
Albany, NY 12207  

Dear Hon. Roger J. Miner,  

1. We must hold fast by the laws that God sent down in the past; through the scriptures and prophets. God revealed the Torah to Moses, the Gospel to Jesus the son of Mary, and the Qur'an to Muhammad (May the peace and blessings of God be upon them all). In them were God's commands. When people went away from following God's commands, they ended up following the whispers of the devil, that commanded cruelty and doing injustice to others.

2. Every person will be in front of the court of God in the afterlife, and God will explain and show to everyone what they did in this life. God knows about a person's actions better than the person himself. God will also show people the results that their actions led to when they went away from the truth, and following the guidance of God. God will give the account for the wrongs that one has done to others, and their refusal to follow justice. God will transfer the good and bad deeds from one to another, according to the wrongs one did to another. God will repay all for their words (talk) to others.

3. On the Day of Judgement, no person will be able to find anyone to help him with the trial in front of God. No person will be willing to accept the wrongs earned by another to his account. There will be no one to accept the blame and accountability of one's actions. One's spouse, parents, and children will all be concerned about their own accounts, and will not accept the bad deeds of anyone.

4. I would like to come and see you in person, so that I could meet you informally. So that I could explain myself and my beliefs, if there are any hard feelings. I won't talk about any business or politics; just so as to remove any ills. I would like to talk to you personally, over some dessert, or meet you at your office.

5. I would also welcome you to come by our mosque and meet our brothers and sisters, and see what we are about. You are welcome to come by anytime, (even after retirement) and we would be glad to have you meet our congregation. You could see the change that Islam has made in some people's lives.

6. To God belongs the dominion of the heavens and the earth.

Sincerely Yours,

Faisal Ahmad  
ahmadf79@yahoo.com  
(518) 221-0022
ONLOOKERS CLOG STREETS NEAR MOSQUE

Erik Kriss Albany Bureau

The dozen or so worshippers who gathered at the Masjid As-Salam mosque in downtown Albany Thursday found themselves far outnumbered by reporters, camera operators, photographers and onlookers. A regular 1 p.m. prayer service went on as scheduled at the mosque, 278 Central Ave., just blocks from the state Capitol on one of downtown's main streets.

Crowds also gathered down the hill from the Capitol at the federal courthouse for the 2 p.m. arraignment of Yassin Muhiddin Aref, 34, the imam of the Masjid As-Salam mosque, and Mohammed Mosharref Hossain, 49, one of the mosque's founders and owner of the Little Italy Pizzeria in Albany.

Aref told U.S. Magistrate David Homer that he spoke only a little English. A translator reread all the remarks in Aref's Kurdish dialect. While Hossain said he would hire his own lawyer, Aref asked for a court-appointed attorney.

"I think they got caught up in the wrong place at the wrong time," Sajid Ahmed, a mosque worshiper, said outside the courthouse after the arraignment. "The two men were being nice and got entrapped."

Ahmed described any potentially discriminating statements they made as "a slip of the tongue. They were good people. They were never against anybody. They loved the United States."

Ahmed and Faisal Ahmad, the 25-year-old son of mosque president Shamshad Ahmad, repeatedly cited the need to believe in the "hereafter" and said justice ultimately is meted out there.

"I think it's important that we wait for due process," Faisal Ahmad said. "We're still learning more about the investigation ourselves and I think that we need to wait till more details come out until we have the full story before we can draw any conclusions."

Shamshad Ahmad issued a statement saying, "Albany Muslims wish to declare that..."
they are against any and all forms of terrorism. ...

"We are concerned about the backlash and hate-crimes that result from the stereotyping of Muslims. We are a peace-loving, law-abiding people. The actions of a few individuals should not reflect upon our mosque or religion."

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

Caption: PHOTO Dennis Nett/Staff photographer A MEMBER of the Masjid As-Salam mosque on Central Avenue in Albany walks inside Thursday as Albany police officer D.J. Colonna watches the building. The mosque was closed to worshippers for several hours as agents searched it. Color Dennis Nett/Staff photographer YASSIN Aref leaves the federal building in Albany on Thursday. Color Dennis Nett/Staff photographer MOHAMMED Hossain leaves the federal building in Albany Thursday. Color GRAPHIC: Along the Thruway In the last two years, federal authorities have made high-profile arrests in three cases involving Muslims in Upstate New York. Authorities have said there is no evidence the cases are linked in any way. Lackawanna, Erie County Six men of Yemeni descent are arrested in the Buffalo suburb in September 2002 and accused of running a "sleeper" terrorist cell. All six pleaded guilty and have been sentenced to federal prison. DeWitt Help the Needy, an Islamic charity, and four of its officials are indicted in February 2003 on charges the charity illegally sent money it collected to Iraq. Dr. Rafil Dhafir, who headed the charity, remains in jail awaiting trial on those and other charges. Albany Two leaders of an Albany mosque are arrested Thursday in an alleged plot involving a scheme to buy a shoulder-fired missile. The Post-Standard.

---- INDEX REFERENCES ----

REGION: (United States - New York (USNY); North American Countries (NAMZ); United States (USA); Northeast U.S. (USE))

Language: EN

OTHER INDEXING: Ahmed, Sajid

EDITION: FINAL

Word Count: 583

8/6/04 SYRACUSE A6

END OF DOCUMENT

September 28, 04

United States Appeal Courthouse  
40Foley Square  
New York City, N.Y. 10007

Attn: As Follows--

Honorable Judge Robert Katzman
To: Honorable Judge Roger Meiner
Honorable Judge Nickalas Tsoricalas

In all sincerity, I wish to thank whole heartedly, to each one of you for having the foresight in making the right decision on behalf of Mr. Mario Fortunato, by over turning his Life sentence given by the Honorable Judge I. Leo Glasser, in which his life has been given back to return to his family.

Added to this miraculous event, I assure your Honor, that there are countless and endless like myself, who are shocked and ecstatic with joy and that at times like this, our faith in our judicial system has been restored!

Why is it that the Appelate Court has overturned Mario Fortunato's conviction and was then transferred to a judge who did not as it's been stated, has no authorization to follow up on your ruling?

If it's coming back to the Appelate Court, my question is why did it ever leave your court?

I know the law does not base itself on human emotions, but some family feelings should be taken into consideration. It appears to me, that bruised egos and pride is teetering on cruelty and that makes it personal! When does this charade End?

Once again, most indebted to you three Honorable Judges for over ruling it's sentence --

Most sincerely,

Margaretanne (Margie) Romano
Hi Judge,

Hope all is well. Happy and healthy New Year to you and Jackie.

Sorry to disappoint you but I have been unable to locate a source for your Moot Court brief. It seems that only the briefs from the final rounds (about 20 teams that year) are formally retained by anyone. Don’t know if you remember this or not but one of your competitors was Arlen Specter (Yale) (he didn’t win). I also discovered that two other of your competitors are now Proskauer partners -- Stephen Rackow Kaye (Judith Kaye’s husband and someone I spent a number of years working with) (he represented Cornell); and Bob Kaufman (former City Bar Ass’n President) (he represented Brooklyn Law) (they didn’t win either).

Wish I could have found it, especially after telling you (prematurely) that I thought I had. Sorry again.

Send my best to Jackie. I seem to bump into Aaron fairly often; that means he’s spending a lot of time in the library (a good thing, I suppose).

Keep me posted on your schedule; would love to drop by again when you are in New York and have the time.

Regards,

Michael
A judge is honored

The Columbia County Bar Association honored Judge Roger J. Miner of the United States Circuit Court of Appeals at the County Courthouse yesterday. The occasion was the presentation of a portrait of the judge donated by 31 of his former law clerks. A lifelong resident of Hudson, Judge Miner was appointed to the federal bench by President Ronald Reagan. In 1997, he assumed senior status in the U.S. Court of Appeals for the Second Circuit.
If their recent good luck holds out, Mario Fortunato could soon be baking bread and pastries at Fortunato Brothers, his family-owned landmark bakery in Williamsburg, Brooklyn, and Carmelo "Carmine Pizza" Polito could be back making pizzas and calzones at his pizzeria in Astoria, Queens, the Polito Pizza Corporation. Talk about remarkable good fortune.

Fortunato, 57, and Polito, 45, are both reputed longtime Genovese associates. Last year they began serving life sentences for the racketeering murder of Sabatino "Tino" Lombardi and the attempted murder of Michael "Cookie" D'Urso.

Because of some expert lawyering, as well as a convoluted 42-page ruling issued earlier this month by a three judge panel of the Second Circuit Court of Appeals, both men could be getting their hands back in the dough.

The appeals court agreed that there was overwhelming evidence that the men had taken part in Lombardi's slaying and the attempted murder of D'Urso at a Williamsburg social club in 1994. But it ruled that Polito and Fortunato shouldn't have been found guilty because the shootings weren't Mafia related and could not be prosecuted under the racketeering statutes.

Judges Roger Miner, Robert Katzman, and Nicholas Tsoucalas said the motive for the murder plot was greed - Polito, a degenerate gambler, owed his victims $60,000 - and had nothing to do with mob activities, as prosecutors claimed. In agreeing with Polito's lawyer, noted appeals specialist Diarmuid White, the court wrote that "the evidence was insufficient" to establish the charge that Polito and Fortunato murdered Lombardi to "maintain or increase" their positions in the Genovese family, or that the shootings were in any way related to crime-family business.

The ruling has prompted much head scratching on both sides of the aisle. Wiseguy crimes generally stem from organized, wiseguy activities. Hence, when John Gotti took on Paul Castellano in 1985, prosecutors successfully argued that he was looking to take over the crime family. The motive ascribed to Polito is decidedly less lofty than Gotti's, but nonetheless mob-connected: Polito wanted to switch mob crews, earn more money, and perhaps become a "made guy."
A Fortune Cookie for Mob Bakers

JERRY CAPECI

If their recent good luck holds out, Mario Fortunato could soon be baking bread and pastries at Fortunato Brothers, his family-owned landmark bakery in Williamsburg, Brooklyn, and Carmelo "Carmine Pizza" Polito could be back making pizzas and calzones at his pizzeria in Astoria, Queens, the Polito Pizza Corporation. Talk about remarkable good fortune.

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Dear Judge Miner,

Thank you so much for one of the most touching notes I received at the time of my father's death. Thank you also for keeping me and my family in your thoughts and prayers during what was a particularly difficult time for us.

Roseann
Dear Roger,

How very kind of you to send such a lovely note about my mother's death.

What a great privilege it is to have such thoughtful, caring, and otherwise wonderful colleagues.

With all best wishes to Jackie and sincere thanks,

[Signature]
December 1, 2004

Dear Colleagues,

Thank you so much for the lovely basket of fruit and delicacies that you sent to Susana and me. It was tremendously heartwarming. We appreciated it enormously.

What a joy to have such generous and wonderful colleagues.

With sincere thanks,

[Signature]

All best wishes to Jackie and Susana. We wish you both a very happy holiday season.
December 8, 2004

Honorable Roger J. Miner
United States Court of Appeals
United States Courthouse
445 Broadway, Suite 414
Albany, NY 12207

Dear Judge Miner:

Thank you for sending me your article Judicial Ethics in the Twenty-First Century. I shall add it to my ever-growing list of must reads and share it with my colleagues.

Sincerely,

Richard A. Matasar
Dean and President

P.S. I hope you and your family have a wonderful holiday season.
The guy who writes the blog to which I've linked below has a thing about formatting of opinions. He's made this observation on two of your opinions that I thought you might want to see. Maggie


In Palmieri v. Lynch, the court affirmed the dismissal of a suit alleging a Fourth Amendment violation when state officers momentarily trespassed on plaintiff's land to inspect his dock. "That the agents were dispatched by Palmieri within minutes of their entry and that no damage was done might have justified the disposition of this case by application of the maxim de minimis non curat lex." Judge Straub, finding this to be a case about an unprecedented extension of the "special needs" exception to the Fourth Amendment in the case of regulatory searches, dissented.

In Aktiengesellschaft v. Ecoplas, Inc., the court confirmed an arbitration award. This case apparently resolves an important open question about the consent-to-confirmation requirement in cases brought under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. What that question is, I'll let you figure out yourself.

Finally, in Savin Corp. v. Savin Group, the court affirmed in part and reversed in part a grant of summary judgment in a trademark case. The most notable thing about this decision, to me, is that it's written in an entirely different format from today's first opinion -- Palmieri v. Lynch -- even though they're both written by the same judge (Roger J. Miner). Is it possible that in the CA2, not only does each judge have his or her own opinion format, but each clerk does too?
December 14, 2004

Hon. Roger J. Miner
Circuit Judge
U. S. Court of Appeals, Second Circuit
U. S. Courthouse
445 Broadway, Suite 414
Albany, NY 12207

Dear Judge Miner:

Thank you for sharing with me the reprint of your article on judicial ethics from the Hofstra Law Review. I will share it with members of our faculty.

It was good to read your reference about teaching law students and reminds me to once again thank you for your services as a member of our adjunct faculty. Having access to such a respected jurist provides a heightened educational experience for our students and is much appreciated by them and by me.

Your article is especially timely as we face the challenges of increasing the Law School's national reputation and call upon our alumni to increase their support of this vision. While we do count on our alumni to assist us in these efforts, we must be vigilant in assuring our graduates in the judiciary that we recognize and respect their limitations with regard to fundraising. I congratulate you on the publication of this significant article.

Best wishes for a wonderful holiday season.

Sincerely,

Thomas F. Guernsey
Some Warrantless Visits By Inspectors Allowed

Circuit Broadens ‘Special Needs’ Exception

BY MARK HAMBLETT

THE "special needs" exception to the warrant requirement in the Fourth Amendment can be applied to a regulatory inspection of private property by environmental officials, a divided federal appeals panel has ruled.

Judges Roger J. Miner and Jose A. Cabranes of the U.S. Court of Appeals for the Second Circuit found a Department of Environmental Conservation inspector was justified in walking onto private property to perform a visual inspection of tidal wetlands for a proposed dock expansion in Babylon, even though the owner had written the department to specifically refuse access to his land.

"We think it is wise for courts to be cautious in applying the special needs doctrine, given that it allows for a degree of governmental intrusion into concededly private areas," Judge Miner wrote in Palmieri v. Lynch, 03-9038. "But we cannot escape the conclusion that in cases such as the one at bar, the doctrine may be especially applicable, given its utility in providing a framework to balance important non-arbitrary governmental objectives against de minimis intrusions in situations in which there is some degree of an expectation of privacy."

The opinion was strongly opposed by Judge Chester J. Straub, who in dissent said the court was expanding the "narrow 'special needs' exception to cover non-exigent searches" of private property "belonging to citizens who neither have nor are suspected to have committed any crime at all."

Judge Straub called it "an extraordinary step" that represents "an aggressive shift in our Fourth Amendment jurisprudence away from the rights of individuals to maintain control of their homes toward the privilege of government agents to invade without either receiving consent or casting their claims of need into the crucible of judicial review."

"Until today," Judge Straub said, "the special needs exception to the Fourth Amendment warrant requirement had been "conservatively applied to emergency situations, to commercial enterprises and public facilities governed by regulatory schemes, and to the living spaces of parolees."

The homeowner, Paul Palmieri, had already battled the Department of Environmental Conservation, over inspections on his 1993 application to extend his 52-foot residential dock and pier when he applied to add another 50 feet in 1999. The dispute eventually ended in a settlement that allowed him to add 40 feet to the structure.

After Marine Resource Specialist Pamela Lynch was assigned the application, she allegedly received a letter from Mr. Palmieri saying he refused to consent to a land-based inspection of the property. On April 3, 2000, Ms. Lynch rang the doorbell of his home and, hearing no answer, walked through the gate of a

Federal Securities Claim Dismissed

As Already Decided in State Action

BY MARK HAMBLETT

A Federal District Court in New York has dismissed a securities fraud case filed by shareholders of two financially troubled companies.

The court ruled that shareholders had failed to state a claim under the federal securities laws, because they had filed suit after the companies had already been declared bankrupt.

The shareholders had brought the case against the companies and their former officers, alleging that the officers had misled investors by failing to disclose the companies' financial problems.

The court ruled that the shareholders had filed suit after the companies had already been declared bankrupt, and therefore had failed to state a claim under the federal securities laws.

The court's ruling came in a case filed by shareholders of American General Foods Company and American Continental Corporation, which had both declared bankruptcy in 1982.

The shareholders had alleged that the officers had misled investors by failing to disclose the companies' financial problems, and that the officers had profited from the sale of company stock during the companies' bankruptcy

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Some Warrantless Inspections Upheld

Continued from page 1

A fence that had been marked “No Trespassing” and “Beware of Dog.”

Mr. Palmieri ran out of his house holding a video camera to record the scene and told Ms. Lynch she would be arrested unless she left the property immediately.

Although Ms. Lynch complied, Mr. Palmieri filed suit in the Southern District, claiming violation of his Fourth Amendment rights.

Eastern District Judge Joanna Seybert granted the department’s motion for summary judgment and dismissed the case. Mr. Palmieri appealed to the Second Circuit.

Balancing Test

Judge Miner said applying an analysis of the special needs doctrine to determine whether the exception is warranted does not automatically mean the exception applies—that does such an inquiry into the applicability of the exception “make all other types of routine, regulatory inspections permissible.”

“Rather, the inquiry into the special needs doctrine and the application of the special needs exception simply allows this court, or any reviewing court, to make a constitutional inquiry concerning the government’s challenged conduct and to balance or weigh the government’s regulatory interests against the individual’s protected privacy interest under the Fourth Amendment,” he said.

The analysis, he said, involves exploring the nature of the privacy interest allegedly compromised by the government, the character of the intrusion and the “nature and immediacy” of the state’s concerns and the effectiveness of the governmental conduct in meeting them.

Mr. Palmieri, Judge Miner said, had a “subjective” expectation of privacy and to some degree an “objectively reasonable” expectation but his privacy expectations were diminished by the fact that his property was visible by boat and from adjoining properties.

Ms. Lynch’s intrusion was minimal, he said, a fact that “weighs heavily” against Mr. Palmieri. The circuit agreed with Judge Seybert when she said that “the governmental interest in protecting natural resources and the public beaches and waterways is serious.”

“Indeed,” Judge Miner said, while there is no case law directly on point with respect to environmental inspection of residential property, there can be no principled distinction made between the need to inspect commercial property and the need to inspect residential property where the residential property consists of protected tidal wetlands.

The circuit cautioned in response to any concern that our application here of the special needs balancing test could be interpreted as making all other types of regulatory inspections permissible, we note that we are not holding that any warrantless visits to premises under any environmental regime is permissible.

Rather, he said, “we hold merely that an environmental regulatory scheme involving warrantless searches may be subject to a special needs ‘fact-specific balancing’ test.”

Judge Straub said consideration of the special needs doctrine was not only wrong, but needless.

“Faced with this stand-off, the DEC would well have been within its authority to deny the permit application,” he said, referring to the Department of Environmental Conservation.

“As a state actor subject to the Fourth Amendment, however, Agent Lynch had no right whatever to lead a governmental incursion into the private areas of the curtilage surrounding Palmieri’s home.”

R. Bertil Peterson, staff counsel for the Coalition of Landlords, Homeowners & Merchants, Inc. of Babylon, represented Mr. Palmieri.

Gregory J. Nolan of the New York attorney general’s Environmental Protection Bureau represented the Department of Environmental Conservation.

Mark Hamblett can be reached at mhamblett@amlaw.com.
March 28, 2005

The Honorable Roger J. Miner
U.S. Circuit Judge
U.S. Courthouse - Court of Appeals
40 Foley Square - Room 2202
New York, NY 10007-1502

Dear Judge Miner:

On March 24, 2005, the Federal Bar Council hosted a reception honoring all Circuit Judges for the United States Court of Appeals for the Second Circuit. The reception was attended by a wide spectrum of the bar and judiciary, including District and Magistrate Judges, and was our way of paying long-overdue and very appropriate homage to you and your fellow Circuit Judges. We thank you for your service to our courts, to our society and to the members of the bar.

Although you were not able to be present during our ceremony, on behalf of the Trustees of the Federal Bar Council, we would like to present this small recognition of your continued service to the court.

Sincerely,

Jeanette Redmond

Enclosure
Ms. Paul Shulman  
President, Congregation  
Anshe Emeth  
P.O. Box 172  
Claverack, NY 12513

Dear Paula:

Although we are unable to attend the 25th Anniversary luncheon honoring Rabbi Fried on May 15, Jackie and I wish to extend our congratulations and best wishes to Rabbi Fried on reaching this milestone in his service to the Jewish community and to the community at large. It is most fitting that he receive this tribute.

Rabbi Fried has been an outstanding spiritual leader and an excellent teacher for our Congregation. He has reflected great credit upon us in reaching out to our non-Jewish neighbors through interfaith dialogues, participation in local ceremonies and promotion of cultural events. He is a first-rate scholar, a compassionate advisor, a comforting presence and a good friend.

The Rabbi has a sunny disposition and a fine sense of humor, although some of his jokes are on the corny side. He is a pleasure to be with and to learn from. He also knows how to finish a service on time, which is a very good thing. He also performs well on the large Shofar.

We have been most fortunate to have Daniel and Denise with us for all these years. May they have good health and great happiness as they continue their superlative service.

L’Chaim!

Sincerely,

Roger
May 18, 2005

To: All Circuit Judges

Re: Court Meetings - June 22-23, 2005

MEMORANDUM OF JMW

On June 22, 2005, we will hold a regular Court Meeting following the en banc rehearing scheduled for 2 p.m. Light lunch will be served in the Conference Room at 12:30 p.m. In addition to the agenda items, we can use the meeting as an opportunity to air preliminary views on the en banc matter, assign voting memo responsibilities, etc.

There will be a Court dinner on the evening of June 22 continuing our tradition of honoring senior judges. RJM will be the honoree.

On June 23, 2005, we will hold a Special Court Meeting to consider proposals to manage our increased caseload by the Backlog Reduction Committee following our May 16th meeting. The meeting is scheduled for 12 noon. I ask presiders to begin their calendars at 9:30 a.m. so that the meeting can begin promptly. Senior judges are encouraged to attend. You will be receiving materials in advance.

J.M.W.
Together with their families
Alyssa Barrie Moss
and
Darren Patrick Cunningham
invite you to share in the celebration
of their marriage
Saturday, the fourth of June
Two thousand and five
at half after four o'clock
One Merlin's Way
Hudson, New York

Reception immediately
following the ceremony
Dear Judge and Mrs. Miner,

Thank you so much for your lovely gift! The candlestick holders will go wonderfully in our new house!

Alyssa and I are very much looking forward to seeing you both soon on the occasion of our wedding. We are so honored to be holding the ceremony at your home.

Best always,
Darren and Alyssa

---

Dear Judge & Mrs. Miner,

Just a token to express our gratitude to you both. We are very much looking forward to seeing you next week.

Love,

Darren & Alyssa

May 28, 2005
Hello Your Honor. Alyssa and I want to thank you and Mrs. Miner for your wonderful hospitality this weekend. All our relatives and friends had a wonderful time, and holding the event at your beautiful home made for a truly spectacular wedding. Alyssa and I love you and Mrs. Miner very much and we cannot express enough our appreciation. It was such a special day as a result of your efforts and we simply cannot contemplate a better beginning to our marriage. All our relatives and friends remarked on how fortunate we were to hold the ceremony at your home, a sentiment we certainly share!

Please "stay tuned" for some pictures of our home as well as some photos from the wedding.

In the meantime, I thought you might be interested in the attached opinion, which is the Connecticut Supreme Court's dismissal of Gabriel Seymour's appeal. (You may recall that I attended the oral argument.)

Best always,
Darren

dear Judge and Mrs. Miner,

Thank you both from the bottom of our hearts for making our wedding such a special day. You made our friends & family feel so welcome + we truly enjoyed your company. We have seen only a few photos so far, but from what we can tell the mountains & river made a spectacular background. We are enjoying being married - like a big weight lifted off our shoulders. We just received our certificate in the mail & Alyssa will be going to Social Security this week to change her name. We look forward to seeing you soon. Love, Darren & Alyssa.
June 27, 2005

Dear Jackie & Roger,

Missed you, Jackie, at the dinner in honor of Roger last week.

We would have had some good hugs and memories of your swimming pool — and our boat — thanks, again! That was such a great time for the "new kids on the block ....

F. is with me...

Love to you both.

Nestor

Judge and Mrs. Miner
July 1, 2005

Honorable Roger J. Miner
United States Court of Appeals
414 James T. Foley United States Courthouse
445 Broadway
Albany, NY 12207

Dear Roger:

Thank you for your extremely kind letter. It was a great party in tribute to one of our finest. I have passed your letter along.

Sincerely,

JMW:klb

John M. Walker, Jr.
Chief Judge
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

July 1, 2005

TO: WF, JLO, TJM, JON, ALK, RJC, RKW, JMCL, DJ, PNL, GC, JAC, CJS, RSP, RDS, SS, RAK, BDP, RR, RCW, PWH

RE: RJM Court Dinner

MEMORANDUM OF JMW

I thought you would like to see the attached letter I received from RJM.

Attachment

J.M.W.
June 27, 2005

Hon. John W. Walker, Jr.
Chief Judge
United States Court of Appeals
Second Circuit
157 Church Street
New Haven, CT 06510

Dear John:

I write to thank you and all my other beloved colleagues from the bottom of my heart for the lovely tribute, wonderful dinner and beautiful clock presented on the anniversary of my twenty years as a member of our Court. Also, Jackie asks me to thank you for the very colorful flowers and to express to you once again her regrets for her absence. The steep stairs at La Petite Auberge (which she learned about only one day before the dinner) were just too much for her in her present condition.

My twenty years of service on the Court have been a source of great joy to me. We who are privileged to serve are doubly blessed: We have the opportunity to perform important work, and our work is performed in an atmosphere of utmost collegiality, friendship and cooperation. Even as I look back on my two decades of service, I look forward to my continued association with the finest people I have ever known.

Please share the foregoing thoughts with my colleagues. Many thanks.

Sincerely,

Roger
Dear Roger —

Please note that for Dr. Parks, I have received lovely flowers from our Court. Without your warm affection of my colleagues, this difficult time would be even more troubling. May Parks
September 11, 2005

Dear Roger,

your kind words were very consoling to Barbara and me.

We appreciate your reaching out to us in our grief at losing Ruth.

Barbara joins me in sending regards and best wishes to you and Jackie in the New Year.

Sincerely,

Howard
Thank you

Judge:

You were so kind in expressing your appreciation for my work this past summer. I do not believe I have adequately expressed what a privilege and pleasure it was for me to serve in your chambers. What I learned – both in substantive law and in court procedure, as well as oral and written communication – is immeasurable.

I am so fortunate that you included me in so many meetings. The opportunity to exchange thoughts and discuss the legal issues with your Honor and with your superb clerks was invaluable.

(over)
I am certain that my experience in your chambers has left me much better prepared for the world of private practice I am about to enter. Your wisdom and dedication are an inspiration to all of us, and have set a standard for me that I will strive to maintain throughout my legal career.

For all of this, I thank you.

Helena
The Honorable Justice Roger J. Miner  
U.S. Court of Appeals for the Second Circuit  
One Merlin’s Way, Camelot Heights  
Hudson, NY 12534-4157

Dear Justice Miner,

On behalf of Dean Richard Matasar and myself, I want to express our heartfelt thanks to you for serving as a Final Round Judge in the Charles W. Froessel Intramural Moot Court Competition. Rick was very sorry that he was out of town and had to miss the final round, and I was so happy to be here.

You were such a perfect combination of an active, well-informed Judge, and an alumnus who understands how hard it is for students to appear before you. You helped make it a wonderful experience for the students, their families and all of us in the courtroom.

It was very nice to hear your praise of the students. Thank you for being so generous with your time and your wisdom. (I went home to my 14-year-old lawyer-in-early-training with your wonderful “wise/better-informed” story that you told when you were rendering your decision. He loved it.)

Sincerely,

Suzanne Davidson
Associate Dean
Dear Fellow Bar Member:

I hope everyone had a wonderful summer. The November meeting of the Columbia County Bar Association for 2005 will be held at 5:30 p.m., November 10, 2005, at Ca’ Mea Restaurant, Warren Street, Hudson. The business side of the meeting will begin at 5:45 sharp and should be concluded by 7 p.m. Dinner will be shortly thereafter.

Our special guest will be the Hon Roger Miner, Judge of the Second Circuit Court of Appeals. Judge Miner began his legal career in Columbia County, and went from district attorney to supreme court justice, to federal district judge, and then to his present lofty position. His talk will doubtless be entertaining.

Because there was no meeting over the summer, we have lots of things to cover, so please arrive at the business meeting on time. One of the agenda items is the newly created Alternate Conflict Defender's position in Columbia County. This position will pay $45,000 plus benefits. County Attorney Dan Tuczinski will tell us about it at the meeting, but you can also contact him independently at the County Attorney's Office.

This meeting will be well attended, so please make your reservations early. Below are your dinner choices. Please let Anthony Buono, association secretary, know about whether you are attending and your dinner selection no later than the end of the business day on October 28th. You may 1) Mail your selection to him at P.O. Box 300, Valatie, NY 12184; 2). Call his office at (518) 758-1979; or 3). E-mail your information to him at anthonybuono@berk.com.

You must be a member of Association to attend this meeting. For those of you who have not yet paid your 2005 dues or who wish to join, please send your dues of $100 payable to the Columbia County Bar Association to Kenneth Esrick, 28 Park Row, Chatham, NY 12037 (518-392-2223). If you wish to attend the November 10th meeting and dinner, please pay your dues as soon as possible.

I look forward to seeing all of you on November 10th.

Jason L. Shaw, President

--------------------------

I will attend the Bar Association Dinner at Ca’ Mea on November 10, 2005.

Choose one:
- Sauteed shrimp with fresh artichokes in a white wine sauce
- Mixed seasonal salad
- Soup of the day

Choose one:
- Roasted pork loin with apple marmalade
- Pan seared chicken breast with fontina cheese and zucchini
- Grilled swordfish with fresh tomato and basil

Choose one:
- Rigatoni in a veal ragout
- Homemade gnocchi, tomato sauce and arugula

Choose one:
- Apples baked in Chianti wine and served with vanilla bean gelato
- Thoroughly intense chocolate cake
- Mixed berry fruit tart

[insert name]