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Roger J. Miner '56

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NEW YORK LAW SCHOOL LAW REVIEW



DEDICATION
Roger J. Miner

Volume XXX

Number 4

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Judge Roger J. Miner
United States Court of Appeals
For The Second Circuit

NEW YORK LAW SCHOOL LAW REVIEW

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DEDICATION: ROGER J. MINER

With the publication of this volume, the *New York Law School Law Review* proudly celebrates its thirtieth anniversary of scholarly contribution to the legal and academic community. What better way to commemorate this milestone than by recognizing one of our most distinguished alumni. It is with pride and admiration that the editors and staff dedicate Volume Thirty to the *Review's* first Managing Editor, Roger J. Miner, United States Circuit Judge for the Second Circuit Court of Appeals.

Thirty years ago, the editors of what was then known as the *New York Law Forum* dedicated their first volume to another distinguished law school alumnus, John Marshall Harlan, class of '24, upon his appointment by President Eisenhower to the Supreme Court of the United States. It is singularly appropriate that on the anniversary of that dedication, a leading member of the first editorial board is now the subject of a similar tribute in honor of his elevation to the Court of Appeals.

This is not the first significant milestone for New York Law School and Judge Miner. Judge Miner's father Abram, now in his fifty-ninth year of law practice, graduated from the Law School in 1926. Marking another anniversary, Abram Miner attended his thirtieth class reunion in the same year that Judge Miner was graduated *cum laude* from New York Law School. In 1986, as the Miner family's association with the Law School community reaches its sixtieth year, Judge Miner's son Ralph has commenced his law studies on Worth Street.

In his law school days, Judge Miner was awarded the Nathaniel L. Goldstein Award for excellence in constitutional law. In addition to serving as the *Law Review's* first Managing Editor and receiving the Law Forum Prize in 1955 for his outstanding contributions to the *Re-*

view, Judge Miner was a valued member of the moot court team.

Judge Miner's rich and fulfilling relationship with the New York Law School community continued following his graduation from the Law School in 1956. An Honorary Director of the Alumni Association and member of the Law School Advisory Council, Judge Miner gives generously of his time and effort in support of the school. A recipient of the Dean's Medal for Distinguished Professional Service, Judge Miner was most recently honored this past November when the Alumni Association bestowed upon him its Distinguished Alumnus Award.

Judge Miner's accomplishments range far beyond his contributions to the law school community. After graduation and his admission to the bar, he served as a private in the United States Army, later receiving a commission as a first lieutenant in the Judge Advocate General's Corps. Serving on active duty from 1956 to 1959, including tours in Japan and Korea, Judge Miner was awarded the Commendation Ribbon with Medal Pendant for his work on the revision of the *Manual for Courts-Martial*. Judge Miner was admitted to the United States Court of Military Appeals in 1956, and he was admitted to the Bar of the Republic of Korea in 1958, a rare honor for an American. After returning from abroad, Judge Miner served with the Army Reserve and was discharged in October 1964 with the rank of captain in the Judge Advocate General's Corps.

Judge Miner's dedication to public service did not end with his military career. While engaged in private practice with his father in their hometown of Hudson, New York, he served for three years as that city's Corporation Counsel and then as Assistant District Attorney for Columbia County. Judge Miner was elected, and twice re-elected, to serve as Columbia County's District Attorney. While in office, he established and actively pursued a program of continuing professional education for law enforcement officers. He was editor of a monthly newsletter documenting recent developments in criminal law and procedure, and he sponsored regular seminars on legal issues of particular importance to law enforcement personnel.

In 1975 Judge Miner was nominated to fill the post of Supreme Court Justice for the Third Judicial District and was elected to a fourteen-year term. At forty-one, he was one of the state's youngest Supreme Court Justices and the first resident of Columbia County to be elected to the Supreme Court in nearly half a century.

While serving on the state bench, Judge Miner authored more than fifty published opinions. Among his most important decisions was *Consolidated Edison Co. v. Public Service Commission*,¹ in which he

1. 93 Misc. 2d 313, 402 N.Y.S.2d 551 (Sup. Ct. 1978), *rev'd*, 63 A.D.2d 364, 407 N.Y.S.2d 735 (App. Div.), *aff'd*, 47 N.Y.2d 94, 390 N.E.2d 749, 417 N.Y.S.2d 30 (1979), *rev'd*, 447 U.S. 530 (1980).

held that, as a matter of commercial free speech, public utility companies were entitled to distribute bill inserts discussing controversial issues of public policy. Although reversed by both the appellate division and the New York State Court of Appeals, Judge Miner's opinion ultimately was upheld by the United States Supreme Court.²

In the fall of 1981, Judge Miner became one of President Reagan's first nominees to the federal bench. After Senate confirmation, he was sworn in as United States District Judge for the Northern District of New York on October 10, 1981. While serving in the sprawling thirty-two county district in upstate New York, covering more territory than any other district within the Second Circuit, Judge Miner shouldered one of the heaviest per-judge caseloads in the entire country.³ In his four years on the District Court bench, he authored seventy-eight published decisions covering the full range of issues facing the federal courts.⁴

Judge Miner's decisions reflect his sophisticated understanding of modern social and legal problems, as well as a welcome sense of pragmatism. The body of his work is characterized by remarkable scholarship and perception, and a sense of justice and fairness that has be-

2. Consolidated Edison Co. v. Public Serv. Comm'n, 447 U.S. 530, 544 (1980).

3. Judge Miner's workload for the 12-month period ending June 30, 1984 included 771 total filings, 904 total cases pending, and 544 total dispositions. He completed 45 trials: The median time from filing to disposition was 11 months for civil cases and 3.8 months for criminal cases. The median time from issue to trial in civil cases was 12 months. Judge Miner disposed of 92% of his civil cases prior to trial and only 1.7% of his docket (14 cases) represented suits pending for over 3 years.

4. See, e.g., Knolls Action Project v. Knolls Atomic Power Laboratory, 600 F. Supp. 1353 (N.D.N.Y.) (first amendment challenge to ban on leafleting at nuclear facility), *aff'd*, 771 F.2d 46 (2d Cir. 1985); Taylor v. Prudential-Bache Sec., Inc., 594 F. Supp. 226 (N.D.N.Y. 1984) (imposition of sanctions for frivolous litigation); Michelson v. Daly, 590 F. Supp. 261 (N.D.N.Y. 1984) (non-disclosure of identity of confidential informant), *appeal dismissed sub nom. Estis v. Daly*, 755 F.2d 913 (2d Cir. 1985); T.I.M.E.-DC, Inc. v. New York State Teamsters Conf. Pension & Retirement Fund, 580 F. Supp. 621 (N.D.N.Y.) (withdrawal liability under Multiemployer Pension Plan Amendments Act), *aff'd mem.*, 735 F.2d 60 (2d Cir. 1984); Bushey v. New York State Civil Serv. Comm'n, 571 F. Supp. 1562 (N.D.N.Y. 1983) (reverse discrimination in promotional test score adjustments), *rev'd*, 733 F.2d 220 (2d Cir. 1984), *cert. denied*, 105 S. Ct. 803 (1985) (three Justices dissenting); Konik v. Champlain Valley Physicians Hosp. Medical Center, 561 F. Supp. 700 (N.D.N.Y. 1983) (antitrust claim against hospital by anesthesiologist), *aff'd*, 733 F.2d 1007 (2d Cir.), *cert. denied*, 105 S. Ct. 253 (1984); Capital Tel. Co. v. City of Schenectady, 560 F. Supp. 207 (N.D.N.Y. 1983) (antitrust claim barred by "state action" doctrine); United States v. New York, 552 F. Supp. 255 (N.D.N.Y. 1982) (state enjoined from imposing airport curfew), *aff'd*, 708 F.2d 92 (2d Cir. 1983), *cert. denied*, 466 U.S. 936 (1984); Gargiul v. Tompkins, 525 F. Supp. 795 (N.D.N.Y. 1981) (female teacher's refusal to be examined by male physician), *aff'd in part, rev'd in part*, 704 F.2d 661 (2d Cir. 1983), *vacated and remanded*, 465 U.S. 1016 (1984).

come Judge Miner's hallmark.⁵ At his Induction Ceremonies in the District Court, Judge Miner pledged:

I shall ever be mindful that an independent judiciary is indispensable to justice in our society. Upon conclusion of any contested litigation there is a winner and a loser. My goal simply is this—that the loser leave this courtroom without the slightest doubt that justice abides here.

Judge Miner's record bears witness to a goal fulfilled.

Despite his demanding judicial schedule, Judge Miner has always found time for additional public service. Along with his active involvement in the future of New York Law School, he is a dedicated member of numerous civic and religious organizations. Judge Miner has been honored with the Albany Jewish Federation Award, the Kiwanis Award for Community Service and various Police, Rotary Club, and County Magistrates Awards.

Judge Miner has also made significant contributions to the bench and bar. A list of his past and present professional memberships is extensive.⁶ In addition, he has been a frequent contributor to bar journals and participant in a variety of continuing legal education symposia. Judge Miner has also shared his knowledge and experience through his participation as a member of the Criminal Justice Faculty at Columbia-Greene Community College, where he served as an Adjunct Associate Professor of Criminal Law in the State University system. Most recently, Judge Miner was a lecturer in the State University of New York at Albany Graduate program in Court Systems Management, and this fall will be joining the adjunct faculty at New York Law School.

Among Judge Miner's prolific extra-judicial writings⁷ is his acclaimed work, "The United States District Court for the Northern District of New York—Its History and Antecedents," published in 1984 by the Federal Bar Council.⁸ His definitive study meticulously details the creation of the federal courts in New York State and offers compelling

5. Judge Miner's record on appeal is a further testament to the durability of his opinions: Of the 80 Miner decisions reviewed by the Second Circuit, 78 have been affirmed, or affirmed in part, and only two have been reversed.

6. The American Bar Association; the New York State Bar Association; the American Judicature Society; the Federal Judges Association; the Federal Bar Council; the Association of Trial Lawyers of America; the Columbia County Bar Association; the Columbia County Magistrates Association; the New York State Supreme Court Justices Association; the Association of Trial Judges, Third Judicial District; the New York District Attorneys Association; and the National District Attorneys Association.

7. Two of Judge Miner's most recent articles are: *A Judge's Advice to Today's Law School Graduates*, N.Y. ST. B.J., Nov. 1985, at 6; and *Victims and Witnesses: New Concerns in the Criminal Justice System*, 30 N.Y.L. SCH. L. REV. 757 (1985) (Judge Miner's article on the criminal justice system appears in this issue).

8. FEDERAL BAR COUNCIL, SECOND CIRCUIT REDBOOK 270 (Supp. 1984-1985).

evidence of the primacy of his home district. Judge Miner's interest in history is further manifested by his extensive efforts on behalf of the Second Circuit Historical Committee, the Northern District Historical Committee, and the Columbia County Historical Society.

This impressive background of dedicated public service, professional accomplishment and integrity was soon recognized by President Reagan in his search to fill two new judgeships on the United States Court of Appeals for the Second Circuit created by the Bankruptcy Amendments and Federal Judgeships Act of 1984.⁹ On July 17, 1985, President Reagan formally nominated Judge Miner to the Circuit Bench. President Reagan wrote:

Appointing you to be a Circuit Judge on the U.S. Court of Appeals for the Second Circuit was truly a pleasure. I am confident that your outstanding contributions to our fellow citizens while you served as a District Judge will be sustained throughout your tenure on the Appellate Bench.

On September 14, 1985, after confirmation by a unanimous Senate, Judge Miner was sworn in as the fifty-third appointee in the 116-year history of the Second Circuit Court of Appeals. Over 500 well-wishers were in attendance to witness the Investiture of the first Second Circuit Judge ever to be chambered in Albany. Among the distinguished speakers were United States Senator Alphonse D'Amato; Congressmen Gerald Solomon and Hamilton Fish, Jr.; Judge James L. Oakes of the Second Circuit Court of Appeals; Chief Judge Howard G. Munson and Senior Judge James T. Foley of the Northern District of New York; Justice Leonard A. Weiss of the New York State Supreme Court, Appellate Division, Third Department; Justin Vigdor, President of the New York State Bar Association; and Ralph I. Lancaster of the American Bar Association Standing Committee on the Federal Judiciary.

In remarks representative of the tenor of the proceedings, Representative Hamilton Fish, Jr., the ranking minority member of the House Judiciary Committee, observed that "Roger Miner combines a practical, realistic, working knowledge of the law with those distinctive qualities of fairness, industry and patience so necessary in a superior judge." He continued:

By themselves, of course, our Constitution and laws do not guarantee liberty, tranquility, justice, happiness or prosperity. The judicial branch of our Federal Government is the final protector of these values, and we need individuals of the high-

9. Pub. L. No. 98-353, § 201(a)-(b), 98 Stat. 333, 346-47 (codified at 28 U.S.C.A. § 44(a) (West Supp. 1985)).

est standards to exercise this pivotal role in our system. Judge Roger Miner lives up to this important charge. I have every confidence that his future contributions as a judge in this Circuit will equal and surpass his already distinguished contributions to the American legal system

Representative Solomon commented that throughout his career Judge Miner "has remained true to his community, to his beliefs, and to the highest ideals of justice." Circuit Judge James L. Oakes, who presided at the Investiture as Acting Chief Judge of the Court of Appeals, noted:

We are particularly delighted to induct Judge Miner . . . because his presence will serve to grace our Court. His well-known scholarship, his good judgment and keen sense of justice, coupled with his balanced recognition of the fact that individual freedom and liberty carry with them responsibility and duties to others, will add to our Court's stature.

In the span of just twenty-five years, Judge Miner has distinguished himself in all his undertakings, and has earned the respect and admiration of all who have come to know him. As a lawyer, teacher, and jurist, Judge Miner exemplifies the qualities of dedication, self-sacrifice, and determination to which we all aspire. Those who offered their praise at the Investiture recognized Judge Miner's appointment as a fitting tribute to his past twenty-five years of dedicated service. Yet the proceedings were a celebration of the future as well. Senator Alphonse D'Amato expressed the sentiments of all those in attendance when he lauded Judge Miner as a man "who may some day ascend to the ultimate in . . . our judiciary." The New York Law School community joins in this hope as we dedicate Volume Thirty of the *New York Law School Law Review* to our favorite son.