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Back to Article

Habeas Does Not Apply to Immigration Detention, Panel Says

Mark Hamblett 01-10-2008

Immigration detention is not custody within the meaning of the federal courts' habeas statute, a federal appeals court has ruled.

Deciding a case of first impression, the U.S. Court of Appeals for the Second Circuit this week found that since Nigerian immigrant Adeniyi Ogunwomoju is in custody solely for immigration reasons, he could not challenge his state convictions and try to remain in the United States.

In <u>Ogunwomoju v. United States</u>, 06-3734-pr, the circuit said a district court lacked jurisdiction to consider Mr. Ogunwomoju's habeas petition because he was no longer in state custody for his criminal offense.

The decision will be published tomorrow.

The appeal was decided by Judges Roger Miner and Jose Cabranes. Judge Thomas J. Meskill was a member of the panel and voted with the majority, but passed away following submissions in the case. Judge Miner wrote for the court.

Mr. Ogunwomoju filed his habeas petition in the Southern District after several criminal convictions led to removal proceedings against him. He claimed that one of his convictions, a 2000 drug conviction in New York City Criminal Court, should be undone because his guilty plea was involuntary or unlawfully induced, trial counsel was ineffective, and the evidence was seized from him in violation of the Fourth Amendment.

Then-Judge Michael Mukasey dismissed the petition, finding no basis for relief under 28 U.S.C. §2254. Judge Mukasey found that Mr. Ogunwomoju was not in custody pursuant to his criminal conviction, as he had already served his sentence, but was instead in

1/10/2008

immigration custody. Therefore, the judge found he lacked jurisdiction over the petition.

On the appeal, the issue was the meaning of §2554(a), which requires as a prerequisite to a district court entertaining a habeas petition that the application be made "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."

The U.S. Supreme Court, in <u>Carafas v. LaVallee</u>, 391 U.S. 234 (1968), said custody is "required not only by the repeated references in the statute but also by the history of the great writ. Its province, shaped to guarantee the most fundamental of all rights, is to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of the person."

Judge Miner said the Court in *Carafas* rejected an argument by the state that the petitioner's release from state custody during the pendency of his appeal rendered the petition moot. The U.S. Supreme Court said the "collateral consequences" of the conviction, such as loss of employment opportunities, justified continuing to hear the petition.

Mr. Ogunwomoju cited *Carafas*, but to no avail, because the high court later said, in <u>Maleng v. Cook</u>, 490 U.S. 488 (1989), that it did not rest its holding in *Carafas* on collateral consequences "but on the fact that the petitioner had been in physical custody under the challenged conviction at the time the petition was filed."

Judge Miner said, "Although Ogunwomoju was in immigration detention at the time he filed the habeas petition in the District Court to challenge his New York conviction, he was not in custody pursuant to a judgment of the state court."

He said the circuit had never determined "whether a petitioner in immigration detention or under an order of removal as the result of a criminal conviction is 'in custody' for the purpose of a §2254 challenge to that criminal conviction.

"We do so now, and join our sister circuits that have determined that one held in immigration detention is not 'in custody' for the purpose of challenging a state conviction under §2254," he said.

"Removal proceedings are at best a collateral consequence of conviction, and we must bear in mind 'that once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purpose of a habeas attack upon it,'" Judge Miner said, quoting *Maleng*. "That is precisely the situation in which Ogunwomoju now finds himself."

Mr. Ogunwomoju appeared pro se.

Assistant U.S. Attorneys Sue Chen and David S. Jones represented the government.

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November/December 1986

Vol. III No: 7

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page 14

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. page 16

. page 18

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4

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8

IN THIS ISSUE: UNI THERE I

1.1. 1943

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Reagan Judicial Legacy Imperiled As Democrats Seize Senate, But, On The Other Hand, There's Rose Bird And Company. . page A Judge Worth Watching: Roger J. Miner page

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The Republican presence on the Senate Judiciary Committee will drop to eight next January, compared to the ten seats the GOP has held since 1980. Senators Paul Laxalt (R-NV) and Charles Mathias (R-MD) have retired. Senators Jeremiah Denton (R-AL) and John Broyhill (R-NC) were defeated. Senator Mitch McConnell (R-KY) was thinking about leaving the Committee, but several observers now believe he will stay. Returning to the Committee are conservative Senators Strom Thurmond (R-SC), Alan Simpson (R-WY), Orrin Hatch (R-UT), Charles Grassley (R-IA) and liberal Arlen Specter (R-PA). · 中国中一道40元的路径的关键对一 包括 - MERGER

Thus, there are perhaps three slots on Judiciary open for Republicans. To offset the damage caused by retirements and defeats, judicial reformers were, in the wake of the election, asking experienced conservatives such as Robert Dole (R-KS), Steven Symms (R-ID), Gordon Humphrey (R-NH), William Armstrong (R-CO), and

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November/December 1986

Vol. III No: 7

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190

IN THIS ISSUE:

网络植物的 日日 Reagan Judicial Legacy Imperiled As Democrats Seize Senate, But, On The Other Hand, There's Rose Bird And Company. . page 1 A Judge Worth Watching: Roger J. Miner 4 . . . page Legal Education And The Bicentennial Of The Constitution 6 . . page Supreme Court Review, Part VI: In Crime Cases, A Mixed Bag . page 8 Book Reviews: Selected Writings On The Constitution, by Raoul Berger . page 12 The New Right v. The Constitution, by Stephen Macedo . . page 14 Inter Alia page 16 Crime And Punishment Book Released page 18

REAGAN JUDICIAL LEGACY IMPERILED AS DEMOCRATS SEIZE SENATE; BUT, ON THE OTHER HAND, THERE'S ROSE BIRD AND COMPANY -- by Jeffery D. Troutt

The margin of Democrat control of the U.S. Senate, 55-45, stunned most political observers, who expected a slimmer margin or even continued GOP control of the upper chamber. Analysts right, left, and center believe President Reagan's push for judicial reform has been hit harder than any other program on his agenda. Nevertheless, they say, all is not bleak. In fact, in wake of the stunning rejection of three liberal justices in California, many observers are optimistic about the long-term prospects for the judicial reform movement.

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JUDICIAL NOTICE

the liberals in the Democratic Party, and also to the public at large -- no easy task, given that Judiciary will be considering a number of Reagan appointees, as well as issues such as the death penalty and the exclusionary rule. The question for judicial reformers is which Joe Biden will prevail: the one who promsed to "cooperate" with the President, or the one who called his nominees "bimbos".

[JN editor Patrick B. McGuigan contributed to this story.]

<u>A JUDGE WORTH WATCHING: ROGER J. MINER</u> --by Bruce Fein

President Ronald Reagan's most enduring political legacy will be his appointments to the federal bench. As Alexis de Tocqueville observed 150 years ago, "there is hardly a political question in the United States which does not sooner or later turn into a judicial one." The Nation's public policies and the ability of the people to chart their own destiny through the ballot box pivot on the quality of the federal judiciary and a proper conception of the judicial mission in constitutional interpretation.

Appointed in 1985 by President Reagan to the United States Court of Appeals for the Second Circuit, Judge Roger J. Miner possesses the earmarks that herald judicial distinction and influence in the evolution of legal doctrine. Judge Miner is worth watching if only to demonstrate the impact of a single judicial appointment on the path of the law.

Born in 1934 and raised in New York, Judge Miner's early education was marked by excellence and accomplishments. He graduated with honors from New York Law School in 1956, and served there as Managing Editor of the Law Review. In 1964, Judge Miner commenced an impressive career in public service as Corporation Counsel for the City of Hudson. Thereafter, he rose to Assistant District Attorney and District Attorney of Columbia County, a Justice of the New York State Supreme Court, and in 1981 was appointed as United States District Judge for the Northern District of New York. After four distinguished years as a District Judge, President Reagan elevated Judge Miner to the Second Circuit Court of Appeals where he has served for fourteen months. Despite the demands of public service, Judge Miner has taught and lectured widely at law schools and universities, and has been instrumental in boosting the conservative Federalist Society presence within the law school community.

Judge Miner's intellectual and personal attributes are the equipage of an exceptional jurist. Unlike many of his colleagues, Judge Miner does his own work, writing, and analysis from beginning to end. He displays a penetrating mind that refuses to accept conventional legal wisdom simply because it is aged or popular. He thus shares the sentiments of former Justice Oliver Wendell Holmes that nothing is more revolting that a rule of law be accepted simply because it was laid down at the time of Henry IV, especially when the reasons for its origin have long ceased to exist. Judge Miner's trenchant analytical powers are shown in his Circuit Court opinons. In <u>Alston v. Manson</u>, 791 F.2d 255 (1986), he protested against a blunt use of statistical evidence to prove intentional racial discrimination in the selection of prospective jurors. And Judge Miner's devotion to the constitutional reform of federalism occasioned a remonstrance in <u>United States v. Carpenter</u>, 791 F.2d 1024 (1986). There he dissented against the use of federal securities laws to punish an employee of the <u>Wall Street Journal</u> for violating its conflict of interest policy and harming its reputation by profitting from trading in stock appraised in his newspaper's column.

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Judge Miner wrote for the majority in rejecting a constitutional assault on New York's medical malpractice law in <u>Grover v. Abrams</u>, 793 F.2d 74 (1986). The questioned statute required referral of all state malpractice claims to an advisory panel prior to trial. Composed of a judge, physician, and attorney, the panel, if unanimous, submits a recommendation as to liability admissable in evidence at trial. Judge Miner deftly turned aside arguments that the mandatory referral offended the Equal Protection and Due Process clauses of the Fourteenth Amendment or the Seventh Amendment right to jury trial.

Judge Miner put an admirable mastery of internatioanl law and Fourth Amendment jurisprudence on display in <u>United States v.</u> <u>Ouemener</u>, 789 F.2d 145 (1986). In that case, he denied that the Coast Guard either violated a United States-Great Britain agreement or acted unreasonably in boarding and searching a vessel suspected of drug smuggling and flying the British flag.

Judge Miner's opinions are faithful to the modest role of unelected federal judges envisioned by the Founding Fathers. He eloquently expounded on the limits of judicial authority during his Investiture, declaring:

I. . . bring an awareness of the constitutional and pragmatic limitations on the role of the federal judiciary in our society. Our Constitution establishes a separation of powers among the branches of the federal government as well as a deliberately measured allocation of authority between the states and the federal government. We judges are constrained by our oaths to respect the restraints on judicial power envisioned by this system. I believe that compliance with the constitutional mandate requires strict adherence to the interpretive function of the courts and a healthy respect for the American political process.

Judge Miner epitomizes the best in President Reagan's judicial appointments. He is unfailingly courteous to advocates, impartial, and fair-minded. His contributions to rectifying the flaws in prevailing constitutional and statutory jurisprudence have just begun. Judge Miner will assuredly earn a prominent place in the annals of the federal bench.

(Judge Miner will deliver a Bicentennial lecture on the Constitution and States' Rights in February of 1987 at the Heritage Foundation. For details contact Ben Hart, 202-546-4400. Bruce Fein is former Associate Deputy Attorney General of the United States. He is now a Visiting Fellow in Constitutional studies at the Heritage Foundation.)

LEGAL EDUCATION AND THE BICENTENNIAL OF THE CONSTITUTION --by William Bradford Reynolds

Recently, Attorney General Edwin Meese III, in a widely covered speech at Tulane University, dared to confront the myth that our courts are constitutionally free to embark on their own independent and unchecked ideological journey of liberal social reform. The Attorney General brought to the debate a sorely needed historical perspective that could breathe new life into that unique and treasured cornerstone of the Republic -- the Constitution -- and demonstrate, contrary to the naysayer's message, that it is not, never has been, and never will be a "dead letter." The educational process that lies ahead will not be easy -- critically important endeavors rarely are. But a start, a significant start, has been made, and at least there is now a voice in the debate -- a voice of reason -- that has taken up the cause of the Constitution.

That is the good news. The bad news is that the Attorney General has pitifully few allies prepared to join in this education effort. The fact is that for far too long most law schools in this country have largely abdicated their responsibility to educate the future members of the profession on the Constitution. Far too few students of the law are exposed in the law schools to The Federalist Papers, Farrand's Records and Elliot's Debates. Even fewer have so much as a passing familiarity with the stands taken by the Anti-Federalists who, by the force of their arguments, helped produce a Constitution that would indeed endure for all ages to come. Nor are there very many, I suspect, who, if pressed, could even name Article III, Section 2 as that part of the Constitution which declares that "The Supreme Court shall have appellate jurisdication, both as to law and as to fact, with such exceptions and under such regulations as the Congress shall make." And I shudder to think how few of them would feel comfortable defending the inclusion of this clause as a necessary feature of limited government.

Explanations abound for this noticeable failure of our legal education system. In no small measure it derives from the undesirable phenomenon that the overwhelming majority of tenured professors in our law schools today are aligned philosophically with the liberal left, and they view their mission much less in terms of teaching "first principles" than in terms of cultivating new recruits to advance their social reform agendas.

These are the law students of the 1960s and early 1970s who learned their constitutional law in much the same manner as they now teach it: through the case-method form of instruction. Harvard Law School's current catalogue offers a typical description of the introductory course: "A study of the basic principles of



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print story 🕮 back <

Circuit Court will make rare Albany sitting

By CAROL DeMARE, Staff writer Click byline for more stories by writer. First published: Wednesday, April 30, 2008

Court junkies, take notice. For the first time in recent memory, the U.S. Court of Appeals for the 2nd Circuit -- an appellate court in the federal system -- is coming to Albany next month to hear cases.

The three-member panel is based in Manhattan, where the court routinely sits. On Friday, May 16, judges will take over the ornate courtroom on the fourth floor of the James T. Foley United States Courthouse on Broadway.

Dennis Jacobs is the chief judge of the 2nd Circuit, one of 12 circuit courts nationwide. Cases adjudicated in federal district courts, which are the trial courts, are appealed to a circuit court. From there, only a few cases are heard by the U.S. Supreme Court.

Most significantly, it is from these appellate courts that presidents tap judges to sit on the high court. Currently, every one of the nine judges on the Supreme Court previously served on a circuit court.

The Second Circuit has not left the New York City area since 1994 or '95, Jacobs said Tuesday in a telephone interview. "We're going to have a sitting in Albany, and in the fall a sitting in Buffalo and a sitting in New Haven," he said. "So, we're moving out."

Last year, roughly 6,334 cases were filed with the 2nd Circuit that covers New York, Connecticut and Vermont.

Jacobs, a Manhattan resident, was appointed to the circuit court in 1992 by President George H.W. Bush and has been chief judge since 2006. He said he can't disclose the names of his colleagues who will sit in Albany until about a week before they arrive, including whether he will be one of them.

Why are they coming? "We have circuit judges who are residents in cities around the circuit, and we draw our cases from around the circuit, and this is a big circuit with an active federal bar in a number of major cities. This is a recognition of that fact," Jacobs said.

The court is in session all but a few weeks a year, Jacobs said. Some weeks, two panels sit. They are drawn from 13 active judges on the court and nine senior judges.

Fives cases are scheduled for argument in Albany. Two are local. One involves Police Chief Robert G. Whalen's lawsuit against the village of Hoosick Falls. The other pits David and Donna Streck against the East Greenbush Board of Education.

Following arguments, an admission ceremony will be conducted to admit attorneys to the bar of the Court of Appeals. Admission applications can be obtained from the court's Web site http://www.ca2.uscourts.gov or by calling Catherine O'Hagen Wolfe, clerk of the court, at (212) 857-8500.

Completed applications should be sent by May 8 to John Domurad, chief deputy clerk of the federal Northern District of New York, 445 Broadway, Room 509, Albany, NY 12207.

Essay contest

"There Ought to Be a Law" is the catchy phrase to launch a high school essay contest announced by Albany County Legislator Carl Zeilman of Colonie and his fellow Republican lawmakers who are sponsoring the contest. It is open to students in the county, grades 9 through 12.

Students, especially in U.S. history and civics classes, are urged to submit a typed essay of no more than 500 words on a proposed legislative solution to an issue in Albany County.

"The contest is an excellent way to promote individual involvement in the legislative process among students," Zeilman said, "Students are an important part of Albany County's future, and it is important that they are engaged in and develop awareness of the opportunities available in public service."

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IOTO BY TIM ROSK

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Second Circuit Sits in Albany

A panel of the U.S. Court of Appeals for the Second Circuit heard five cases, all from northeastern New York or Connecticut, in Albany on Friday. The session was the first the circuit has held outside its Manhattan home since 1994. Chief Judge Dennis G. Jacobs said panels also will sit later this year in Buffalo and New Haven, Conn. Friday's panel was made of, from left, Judge Roger Miner, Judge, Jacobs and Northern District Judge Thomas J. McAvoy, sitting by designation.



Welcome Honorable Dennis Jacobs Chief Judge of the United States Court of Appeals for the Second Circuit

A Capella Selection Richard J. Miller, Jr., Esq.

Comments Mae A. D'Agostino, Esq.

NDNY Federal Court Bar Association Donald T. Kinsella, Movant

Administration of Attorney Oath Catherine O'Hagan Wolfe, Clerk

> Closing Musical Selection Richard J. Miller, Jr., Esq.

Closing Comments Honorable Dennis Jacobs

Presentation of Admission Certificates

Second Circuit U.S. Court of Appeals

Hon. Roger J. Miner, Senior Circuit Judge Hon. Richard J. Cardamone, Senior Circuit Judge Hon. Rosemary S. Pooler, Active Circuit Judge

U.S. District Court

Hon. Norman A. Mordue, Chief Judge Hon. Neal P. McCurn, Senior U.S. District Judge Hon. Thomas J. McAvoy, Senior U.S. District Judge Hon. Frederick J. Scullin, Jr., Senior U.S. District Judge Hon. Lawrence E. Kahn, Senior U.S. District Judge Hon. David N. Hurd, U.S. District Judge Hon. Gary L. Sharpe, U.S. District Judge

Hon. Gustave J. DiBianco, U.S. Magistrate Judge
Hon. David R. Homer, U.S. Magistrate Judge
Hon. David E. Peebles, U.S. Magistrate Judge
Hon. Randolph F. Treece, U.S. Magistrate Judge
Hon. George H. Lowe, U.S. Magistrate Judge
Hon. Larry A. Kudrle, U.S. Magistrate Judge

U.S. Bankruptcy Court

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy JudgeHon. Robert E. Littlefield, U.S. Bankruptcy JudgeHon. Margaret M. Cangilos-Ruiz, U.S. Bankruptcy Judge

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Back to Article

Circuit Rejects Recusal for Trial Judge Who Ruled on Prior Matter

Mark Hamblett 07-22-2008

A judge who once determined that a defendant must go back to jail for violating the terms of his release is not required to recuse himself from the same defendant's criminal trial, the U.S. Court of Appeals for the Second Circuit has ruled.

Rasheim Carlton argued that Southern District Judge Stephen Robinson should have disqualified himself from Mr. Carlton's bank robbery trial because the judge had already found he had violated the terms of his supervised release by committing the robbery.

United States v. Carlton, 07-2344-cr, required Judges Ralph Winter, Roger Miner and Jose Cabranes to interpret the statute on disqualification of federal judges (28 U.S.C. §455). Judge Cabranes wrote the opinion for the circuit.

The decision appears on page 30 of the print edition of today's Law Jounrl.

Subsection (a) of the law requires that a judge "should disqualify himself in any proceeding in which his impartiality might reasonably be questioned" and subsection (b) lists circumstances when that might be necessary, including when the "judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

In July 2003, Mr. Carlton began a five-year period of supervised release from a conviction for bank robbery. In June 2004, the government moved to revoke his release because he had committed a second robbery on May 28, 2004.

Judge Robinson held a hearing, determined that Mr. Carlton had committed the second robbery and granted the motion, sending Mr. Carlton back to prison for two years and six

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months.

When Mr. Carlton was indicted on the 2004 robbery in August 2005, the case was assigned to Judge Robinson, who rejected defense counsel's motion for recusal.

A jury convicted Mr. Carlton of bank robbery and using and carrying a firearm during and in relation to a crime of violence. Judge Robinson sentenced him to 50 years in prison.

Quoting <u>Liteky v. United</u> States, 510 U.S. 540, (1994), Judge Cabranes said the requirement of recusal whenever a judge's impartiality might reasonably be questioned "is commonly limited to those circumstances in which the alleged partiality 'stem[s] from an extrajudicial source.'"

So opinions held by judges based on what they learned in prior judicial proceedings in a particular case are not normally the basis for recusal, he said, and the "same rationale applies to proceedings in a different case involving the same defendant and the same set of facts."

Therefore, a judge who has made a guilty finding in a revocation hearing does not run afoul of §455 by presiding over a criminal trial for the same offense.

Mr. Carlton had challenged comments made by Judge Robinson at the revocation hearing, including: "I, if called upon, would have found beyond a reasonable doubt, and believe a jury would have, but that's speculation, that Mr. Carlton was, in fact, guilty" of the May 2004 robbery and conspiracy charge.

Citing *Liteky*, Judge Cabranes said that comments made by a judge in the prior proceeding that are "critical or disapproving of, or even hostile to, counsel, the parties or their cases, ordinarily do not support a bias or partiality challenge" unless they show "such a high degree of favoritism or antagonism as to make fair judgment impossible:"

"Employing that standard, none of Judge Robinson's statements at the revocation hearing or his ultimate determination that defendant had committed the May 28, 2004 bank robbery might cause Judge Robinson's impartiality reasonably to be questioned or 'make fair judgment impossible,'" Judge Cabranes said.

Nor did Judge Robinson need to disqualify himself because of §455(b)(1)'s language on a judge having "personal knowledge of disputed evidentiary facts concerning the proceeding."

"Unlike a situation in which a trial judge has knowledge of disputed evidence gained from an extra-judicial source, defendant merely alleges that Judge Robinson gained knowledge of disputed facts during the previous revocation hearing," Judge Cabranes said. "However, as we have previously stated, 'knowledge acquired by the judge while he performs judicial duties does not constitute grounds for disgualification.'" The circuit also quickly rejected Mr. Carlton's argument that he was subject to double jeopardy and concluded that Judge Robinson did not err in admitting evidence of Mr. Carlton's prior crimes and bad acts.

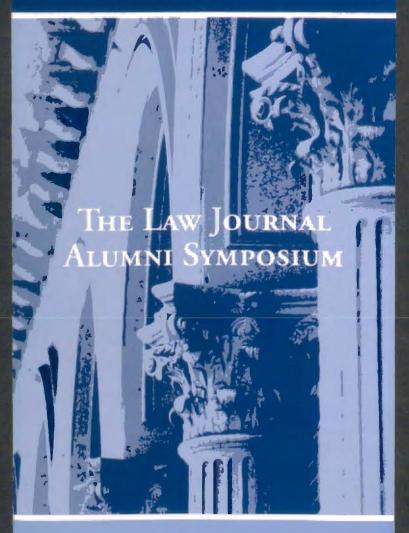
Assistant U.S. Attorney Brent S. Wible represented the government.

Samuel M. Braverman represented Mr. Carlton.

- Mark Hamblett can be reached at Mark.Hamblett@incisivemedia.com.

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Friday, October 24, 2008 9:30 a.m.–3:30 p.m. 47 Worth Street, 5th Floor Wellington Center Conference Room

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SPEAKERS

Steven W. Allen '79

Steven Allen is a co-author of *Modern Federal Jury Instructions— Civil Volumes* (Matthew Bender) and was an editor of the criminal procedure volumes of *Moore's Federal Practice* (Matthew Bender). He has written extensively about a wide variety of subjects concerning federal criminal law and federal habeas corpus.

Carol M. Bast '82

Carol Bast is an associate professor in the Department of Criminal Justice and Legal Studies at the University of Central Florida, where she has taught for the past 17 years. She currently teaches Legal Research and Legal Writing and has written an undergraduate textbook on these subjects. For the past two years she was Editor in Chief of the *Journal of Legal Studies Education*, published by the Academy of Legal Studies in Business.

Lisa L. Chalidze '83

Lisa Chalidze graduated with honors from New York Law School and received a Master of Arts in Liberal Studies from Skidmore College with a focus in law and public policy. As a trial attorney, she has specialized in abuse of power in the context of commercial litigation and the guardianship of disabled persons. Ms. Chalidze has received recognition as an author, educator, and human-rights activist.

Michele D'Avolio '95

Michele D'Avolio received her J.D. from New York Law School, her M.B.A. in Major Finance from Fordham University, and her LL.M. in International Legal Studies from New York University School of Law. Prior to becoming a full-time mom, Ms. D'Avolio was an assistant district attorney for New York County and an associate at Wachtel & Masyr. She is the author of "Child Labor and Cultural Relativism: From 19th Century America to 21st Century Nepal" and "Regional Human Rights Courts and Internal Armed Conflict."

Daniel Gershburg '06

Daniel Gershburg was a member of the *Law Review* and the Harlan Scholars program at New York Law School. Upon graduation, Mr. Gershburg started his own practice focusing on bankruptcy, consumer advocacy, and real estate law. He has been published in New York State Bar Association newsletters, serves as the Committee Chair for the New York State Bar Association Young Lawyers Division Pro Bono Committee, and frequently speaks at community functions in his Brooklyn neighborhood about bankruptcy law and financial advocacy.

Paul Bennett Marrow '69

Paul Bennett Marrow is an attorney and arbitrator in Chappaqua, New York, and a recipient of the Nathaniel L. Goldstein American Jurisprudence Award for Constitutional Law. He is a member of the American Arbitration Association, FINRA, and the National Arbitration Forum, and is an adjunct member of the Regents Review Committee of the New York State Board of Regents.

Hon. Roger J. Miner '56

Hon. Roger J. Miner is a United States Circuit Judge of the U.S. Court of Appeals for the Second Circuit. He assumed senior status in 1997. At the time of his appointment in 1985 he was a United States District Judge in the Northern District of New York, and before that, a Justice of the New York State Supreme Court. Judge Miner is a 1956 graduate of New York Law School, and was Managing Editor of the *Law Review*. Prior to his service on the bench, Judge Miner also served as Corporation Counsel for the city of Hudson, Assistant District Attorney of Columbia County, and District Attorney of Columbia County.

Gregory J. Morse '00

Gregory Morse and his wife, Amy, who also graduated from New York Law School in 2000, have their own firm in West Palm Beach. Morse & Morse LLC specializes in criminal and appellate advocacy. Mr. Morse is on the Board of Directors of the American Inns of Court and is a member of the Florida Association of Criminal Defense Lawyers, National Association of Criminal Defense Lawyers, Palm Beach Association of Criminal Defense Lawyers, and the West Palm Beach Chamber of Commerce.

Bran C. Noonan '05

Bran Noonan is an adjunct professor at New York Law School and a litigation associate at Koehler & Isaacs, where his practice focuses on labor/employment, commercial, and civil rights litigation. He received his J.D. from New York Law School, where he was a member of the *New York Law School Law Review*, and he holds an A.B. in history from the University of Arizona.

Victor Suthammanont '05

Victor Suthammanont is an attorney in New York City. In 2006–07, he clerked for the Hon. Maryanne Trump Barry of the U.S. Court of Appeals for the Third Circuit. Mr. Suthammanont graduated *summa cum laude* from New York Law School, receiving the Alfred L. Rose Award for Excellence and the Otto L. Walter Distinguished Writing Award. At the Law School, he was a Harlan Scholar and an articles editor on the New York Law School Law Review.

The Donald C. Brace Memorial Lecture

This is the thirty-eighth in a series of annual lectures on domestic copyright given in memory of the publisher Donald C. Brace who founded Harcourt, Brace & Co. in 1919. Apart from his interest in the art of literature, he was deeply interested in copyright legislation, the protection of creative talent, and freedom of the press. In 1950, he was awarded the Columbia University Medal of Excellence in recognition of his distinguished contributions to publishing. This series was originally established by a gift from his daughter, Mrs. Donna Brace Ogilvie.

Donald C. Brace Lecturers 1970-2007

- 1. Meville B. Nimmer
- 2. John Schulman
- 3. Hon. Theodore R. Kupferman
- 4. Robert B. McKay
- 5. William Jovanovich
- 6. Hon. Barbara Ringer
- 7. Irwin Karp
- 8. Harry G. Henn
- 9. Sigmund Timberg
- 10. Harriet F. Pilpel
- 11. Leonard Zissu
- 12. Robert A. Gorman
- 13. Hon. David Ladd
- 14. Leo J. Raskind
- 15. Harrison E. Salisbury
- 16. Ralph S. Brown
- 17. Floyd Abrams
- 18. Nicholas A. Veliotes

- 19. Hon. Pierre N. Leval
- 20. Hon. Richard Owen
- 21. Paul Goldstein
- 22. David Lange
- 23. Thomas Mallon
- 24. Gerald Gunther
- 25. Hon. Roger J. Miner
- 26. Hon. John M. Walker, Jr.
- 27. Jane Ginsburg
- 28. Lloyd L. Weinreb
- 29. Hon. Alex Kozinski
- 30. Hugh C. Hansen
- 31. Hon. Lewis A. Kaplan
- 32. Hon. Richard A. Posner
- 33. Hon. Marybeth Peters
- 34. Jessica Litman
- 35. David Nimmer
- 36. Hon. Stanley F. Birch, Jr.
- 37. Richard Dannay



The Honorable Dennis Jacobs, Chief Judge United States Court of Appeals for the Second Circuit

The Honorable Kimba M. Wood, Chief Judge United States District Court for the Southern District of New York

> James A. Williams, Acting Administrator United States General Services Administration

> Emily R. Baker, Regional Administrator United States General Services Administration

> > Cordially invite you to attend The naming ceremony of the

Charles L. Brieant, Jr. Federal Building and United States Courthouse

> Eleven o'clock in the morning on Wednesday, the twelfth of November Two Thousand and Eight

Quarropas Street & South Lexington Avenue White Plains, New York

Reception to follow

R.S.V.P. (212) 805-0504

NEW YORK LAW SCHOOL

Law Review 57 Worth Street New York NY 10013-2960 T 212 431 2118 F 212 431 8193 E iaw_review@nyls.edu www.nyls.edu

Dear Indge Miner,

On behalf of the Law Perion, I would like to thank you for taking the time from your lowsay schedule to delim the keynote address at on recent Law Journal Alumini Symposium. We were honored that you were able to come down from Albony to speak to us, and your remarks were greating appreciated - and, indeed, are still being disunsed in the Law Review offices. You generous untribution helped to ensure that the event would be a success, and we are looking formand to publishing your remarks as the issues introduction. Luoned like to thank you again for the support you've consistently shown the Law Periew. Best regards, Am yng

john.sargent@gsa.gov 11/19/2008 02:11 PM To jdomurad@nynd.uscourts.gov, richard_zeh@nynb.uscourts.gov, Frank_Faragon@nynb.uscourts.govChristine_Connolly, cc

bcc

Subject Foley Courthouse Wins TOBY Award

Great News,

Our very own James T. Foley Courthouse has won the 2008 TOBY Award in the Historic Building category!

The Building Owners and Managers Association (BOMA) held a competition in the Capital Region for The Office Building of the Year (TOBY). Steve Cox and

I entered the Foley Courthouse in the competition under the Historic Building category. We submitted a package addressing various criteria such as the Building Description, Building Standards, Historical Significance, Energy Management, Tenant Spaces, and Community Impact, among others. The Capital Region BOMA sent their TOBY judges to conduct a site visit and assess the building for the competition. Several other historic buildings in the Capital Region competed with the Foley Courthouse in this category.

A crystal etched trophy was presented to GSA at a banquet held on November 13th, 2008, and will be displayed in the Foley Courthouse. This award is an honor for all of us, and I want to take the opportunity to thank all of you for your support and the great pride and care that you show for our building. Thank you!

John

John P. Sargent Property Manager James T. Foley U.S. Courthouse Albany Field Office GSA Public Building Service Northeast & Caribbean Region 518-431-0135 Office 518-488-1325 Cell



TO: All Circuit Judges

RE: December 10, 2008

November 19, 2008

MEMORANDUM OF DJ

Following up on my save-the-date memo, there will be a Court-faculty event at Fordham Law School following our December 10 Court meeting. The address and venue has not been fixed, but it will begin at 6:30 p.m. and conclude no later than 9:15 p.m. Guests are invited.

The reception will run from 6:30 p.m. to 7:15 p.m., and dinner will follow. After dinner, there will be a program on jurisdiction-stripping. Professor Thomas Lee, one of the country's leading Article III scholars, will give a talk about congressional control of the cases and controversies that the national courts may hear, with emphasis on history, constitutional history, and doctrinal developments of particular relevance today. This will be followed by commentary by Abner Greene, the Leonard F. Manning Professor of Law, who teaches federal courts. Daniel Capra, the Reed Professor of Law and the Reporter for the Judicial Conference Advisory Committee on the Federal Rules of Evidence, will moderate an open discussion thereafter.

Dean Treanor is pulling out all the stops to assure that this will be a wonderful occasion and I hope that the members of the Court will join Judith and me in attending.

From: Lance Wheeler <lance1@mhcable.com> To: jminer7080@aol.com Subject: Re: lance pic Date: Thu, 4 Dec 2008 12:46 pm

Dear Mr. Judge, I was hiding behind a big camera. You didn't see me because you kept looking at the Congresswoman. Your remarks were right on the mark. I saw Charlie Shatenkirk (sp) last night at a basketball game. He was telling me about "the old times" while he was eating his mustard splashed hot dog. Regards to everyone, Lance (Sam's son)

jminer7080@aol.com wrote:

Great Photos! Many Thanks! Where the hell were you? You must have been there in disguise. Do you work undercover now? And who is the old fart in the black robe? All the best.

The Judge

-----Original Message-----From: Lance Wheeler <<u>lance1@mhcable.com></u> To: <u>jminer7080@aol.com</u> Sent: Mon, 1 Dec 2008 7:29 pm Subject: lance pic



DSC_0024.JPG

=

Trim your tree and your spending! Get the AOL Holiday Shopping Toolbar for money saving offers and gift ideas.

120007/ 1/... un/Mail/PrintMessage asny

Join Gillibrand at Columbia County Courthouse

To: Jacqueline Miner <jminer7080@aol.com> Subject: Join Gillibrand at Columbia County Courthouse Date: Tue, 25 Nov 2008 5:01 pm

F.

You Are Invited!

You are cordially invited to the **Ceremonial Swearing-In of** Congresswoman Kirsten **Gillibrand** as she joins the 111th Congress in the U.S. House of Representatives.

Monday, December 1st 11:00am

The Columbia County Courthouse 401 Union Street

Reception to follow with light hors d'oeuvres.

*Note: Unfortunately the ceremony will be held in an area that is not wheel chair accessible. We apologize for the inconvenience.





Another term

Kirsten Gillibrand takes oath for U.S. House seat amid Senate speculation

By Andrew Amelinckx Hudson-Catskill Newspapers

The main courtroom of the Columbia County Courthouse in Hudson was filled to capacity Monday as friends, family and supporters of U.S Rep. Kirsten Gillibrand witnessed her swearing-in ceremony for her second term in the House of Representatives.

The ceremony began with a eulogy by the Rev. Richard D. Turpin, the pastor of the Second Baptist Church of Catskill.

Gillibrand, a Democrat from Greenport who represents the 20th Congressional District, defeated Republican Alexander "Sandy" Treadwell in the Nov. 4 election.

She was sworn in Monday by one of her mentors, United States Second Circuit Judge Roger J. Miner, who she once worked for as a law clerk. This was the second time Miner has had that duty.

Miner said he was honored to swear in his "friend, Mount

Please see Term, page A12



Robert Ragaini/Hudson-Catskill Newspapers

Top, Congresswoman Kirsten Gillibrand takes the ceremonial oath of office administered by U.S. Court of Appeals Judge Roger Miner Monday at the Columbia County Courthouse. Gillibrand held her 7month-old son Henry as she took the oath and her 5-year-old son Theo and mother Polly Noonan Rutnik jointly held the Bible she placed her right hand on. Right, Theo Gillibrand peers from behind the Bible he held as his mom took the oath of office Monday.



The Judge and Kirsten

From: Lance Wheeler <lance1@mhcable.com> To: jminer7080@aol.com Subject: The Judge and Kirsten Date: Mon, 1 Dec 2008 8:23 pm



Term

ontinued from page A1

erino neighbor and former w clerk."

"She's the smartest memor of Congress and by far the st looking," he said.

According to Miner Gilliand has always been a "peoe person," even while a law

At the supreme court level, said, the hearings rely on he cold record."

"There are no witnesses, st the attorneys and the cord....Kirsten always wantto go behind the scenes d see who the people were were dealing with," he id, adding that her "empa-"has continued throughout career.

"She's an important memof Congress," said Miner. he's done some great mgs."

Miner mentioned Gillind's 'no' vote for the Wall eet bailout, saying that ple have since found out e was right."

Sillibrand, speaking to the nered crowd, said that she ild continue to work for constituency.

I'll continue being your ocate," she said. "That's Congress is all about."

he Congresswoman, ing her 7-month-old ', Henry, placed her hand Bible held by her 5-yearson Theo while Miner e her into office. Her er and father, Polly Noo-Rutnik and Judge Dou-Rutnik, stood by her side. Ilibrand's husband, han, was working Monnd unable to attend.

recurring theme of the cmod to be Gillibrand ly replacing Sen.

Robert Ragaini/Hudson-Catskill Newspapers

Congresswoman Kirsten Gillibrand addresses the crowd that attended her swearing in Monday in Hudson after the ceremony. Her parents, Judge Douglas Rutnik and Polly Noonan Rutnik, were seated in the front row, right, with her children, 5-year-old Theo and 7month-old Henry.

Hillary Clinton for her Senate seat. Clinton was just named President-elect Barack Obama's choice for secretary of state and will be vacating the Senate in order to take that position.

Miner mentioned it during his speech and afterwards, during a press conference, the local media talked of nothing else.

Miner told the Register-Star after the ceremony that Gov. David Paterson — the person who will decide Clinton's replacement — should take a "good hard look" at Gillibrand.

The Congresswoman said that the governor would choose the right person for the position and that his list of possible replacements for Clinton was full of great candidates.

"It's an honor to be considered," she said.

Gillibrand will busy her second term, told the Register-Star that her priorities included looking at milk pricing with the Agricultural Committee. In the Armed Forces Committee her priorities include improving the Veteran's Administration and ensuring the passage in the Senate of a bill she authored. Bill HR 5831 would require the Department of Defense to create a comprehensive handbook that would guide new veterans in the transition from active duty to unteresting the senate of the terms in the transition from

and detail local resources available to them.

"It already passed the House," she said.

Her overarching concern is the economy. She said job creation, building an alternative energy infrastructure and providing tax cuts to the middle class were all important.

To reach reporter Andrew Amelinckx please call 518-828-1616, ext. 2267, or e-mail



The United States District Court for the Northern District of New York Invites you to attend the In Memoriam for

Honorable Howard G. Munson

Friday, December 19, 2008 at 2:00 p.m. United States Courthouse Third Floor Ceremonial Courtroom 100 S. Clinton Street Syracuse, New York

Reception to Follow

RSVP by December 12, 2008 special events@nynd.uscourts.gov or (315) 234-8599





LAN SUNU

Trustee Fund for Feculty Scholarship

av Judge Miner: Thank you again for coming to NYLS and speaking to all Regards .

Compliments of Cameron Stracher Publisher, New York Law School Law Review

New York Law School 57 Worth Street, New York, NY 10013 T 212-431-2330 F 212-966-9153 cstracher@nyls.edu www.nyls.edu



Dear Judge:

I wish that you still remember me, an intern of Albany Law School, the Chinese girl. I am working in Hong Kong row. Thank you for giving me the opportunity to work for you. It is such a wonderful

May you be blessed experience. this holiday season with peace, health and happiness

I will always remember what you have told me and keep studying and working.

yours sincerely, Li Tang

The Chief Judge of the State of New York



Judith S. Kaye

December 23, 2008

Year Roger, I well keep, and chersch, your beaukful letter forever. It has been my privilege to be part of an ocetitanding Judiciary - State and tederal-and to serve alongside great jurists, and friends, All the Fest, such as you. Judith