

# ENERGY LAW JOURNAL

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The *Energy Law Journal* is published two times a year. Articles by members and non-members of the Association are welcomed. All manuscripts should be of substantial length, not previously published, dealing with the energy industry, and follow *A Uniform System of Citation*. A brief biographical statement should be included. All manuscripts should be sent to Mr. Clinton Vince, Editor-in-Chief, Sullivan & Worcester LLP, 1666 K Street, N.W., Suite 700 Washington, D.C. 20006. Only manuscripts submitted exclusively to the *Energy Law Journal* will be considered for publication. The opinions expressed in the published material are those of the writers and are not intended as expressions of views of the Energy Bar Association. Inquiries about advertising in the *Energy Law Journal* should be addressed to Mr. Andrew S. Katz at (202) 508-0903. The *Energy Law Journal* is indexed in the INDEX TO LEGAL PERIODICALS, The CURRENT LAW INDEX, WESTLAW, and LEXIS services.

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## PRESIDENT'S MESSAGE

The Energy Bar Association salutes the *Energy Law Journal* in its 25<sup>th</sup> year of scholarly contributions to the energy profession. This also is a year of transition for the *Journal* as its Editor-in-Chief, Bill Mogel, hands over the leadership reins to Clint Vince and Bob Fleishman. My predecessor, Barbara Heffernan, headed up a search committee which was very fortunate to recruit Clint and Bob to fill the big shoes that Bill has left after his 25 years of service.

Many of you were able to attend the wonderful celebration of the *Journal's* first 25 years at the EBA Annual Meeting. With the continuing efforts of the University of Tulsa College of Law, the experienced *Journal* Editorial Board, and the *Journal* Foundation headed this year by Rich Meyer, we can look forward to the success of the *Journal* for another 25 years.

Just as the *Journal* continues its success in publishing outstanding articles and committee reports, the Association continues its success in organizing outstanding national and regional programs. Our regional chapters have been realigned into more recognizable groups of states. We anticipate that the Western, Midwest, Southern, and newly formed Northeast chapter will all have successful regional programs in the next 12 months. More information will appear in the Association newsletter that we are now publishing semi-annually to help keep our members up to date.

I'm sure you know that the Charitable Foundation had a tremendous inaugural year. The membership has been extremely generous in its support, both monetarily and in contributions of time and effort. Our thanks go to the contributors, to the first year's Board headed by Paul Nordstrom, and to the current Board headed by Rich Bonnifield.

The Association, the *Journal*, and the Charitable Foundation depend on the support and participation of you, the members. If you'd like to become more involved please contact any of the officers or directors. Thank you!

---

*Stephen L. Huntoon, President*

*Energy Bar Association*



## **Dedication to William A. Mogel Founder and First Editor-in-Chief**

Every once in a long while a man's achievement coincides with his most ambitious dream. Bill Mogel's dream was to establish an energy law journal, under the auspices of the Energy Bar Association, that would be the premier publication in our field. For twenty-five years, with the help of many members, many Editorial and Foundation Boards, many authors, and other contributors too numerous to name, Bill worked tirelessly to achieve his dream.

During Bill's tenure as Editor-in-Chief, the *Energy Law Journal* has been cited by the United States Supreme Court, federal and state appellate courts, and the Federal Energy Regulatory Commission over four hundred times. There are now more than twenty-five hundred subscribers. The *Journal* is received by law firms, law schools, energy companies, and regulatory agencies throughout the world, and it is regarded as the Energy Bar Association's "crown jewel." Through Bill's unwavering efforts the *Journal* now effectively serves as a history of energy law and policy during the last quarter century. Throughout his tenure Bill has served as a mentor, advisor, friend, and trusted confidant to scores of practitioners.

After twenty-five years of dedicated service, Bill requested that the Energy Bar Association organize a transition to a new Editor-in-Chief in order to encourage continuity of leadership. He graciously agreed to serve as Editor-in-Chief Emeritus to ensure that the *Journal* will continue to thrive. Bill has made an extraordinary contribution to legal scholarship in the field of energy law—article by article, volume by volume. He has indeed achieved his dream of creating the most prestigious publication in the energy law field and with his guidance we look forward to sustaining that level of excellence for years to come. On behalf of the entire Energy Bar, we congratulate Bill and express our deepest gratitude for his brilliant legacy.

*Clinton A. Vince*  
*Editor-in-Chief*

*Richard Meyer*  
*President, Foundation of the Energy Law Journal*

## IN MEMORIAM

Jerome J. McGrath died of cancer on April 13, 2004, at the age of eighty-one, at his home in Chevy Chase, Maryland. He enjoyed a long career as an energy law practitioner.

Jerry received his undergraduate and law degrees from Georgetown University. From 1950 until 1965, he was a partner in the Washington law firm of McGrath & McGrath with his father and brother. During this time, he was also General Counsel of Fuels Research Counsel, Inc. In this capacity, Mr. McGrath participated in many proceedings before the Federal Power Commission, representing the coal industry in opposing the introduction of natural gas into new market areas.

In 1968, Mr. McGrath became Executive Vice President and General Counsel of the Interstate Natural Gas Association. He was President of the Association from 1978 to 1988.

Upon his retirement from the Trade Group, Mr. McGrath became Of Counsel to the law firm of Gallagher, Boland & Meiburger. He also served on the Board of Directors of Texas-based Atrion Corporation for fifteen years. Mr. McGrath was a long-time member of the Energy Bar Association and its predecessor. He served on many committees of the Association and was its President in 1963.

Jerry was an avid golfer. In this connection, he was a member of Congressional Country Club, Burning Tree Club, and Rehoboth Country Club in Delaware, where he maintained a summer home.

Jerry was known for his honesty and fairness. He was well respected throughout the natural gas industry. Jerry was always a perfect gentleman. He will be missed.

## IN MEMORIAM

Howard E. Wahrenbrock, who argued numerous landmark appeals that helped define core principles of the Federal Power and Natural Gas Acts, died on April 11, 2004, in Irvington, Virginia, six months short of his 101<sup>st</sup> birthday.

Howard was born November 20, 1903, in Kansas City, Missouri. He attended Kansas City Junior College and then received B.A. and L.L.B. degrees from the University of Michigan. After two years in private law practice in Chicago, he returned to the University of Michigan, where he earned his Doctor of Juridical Science degree.

Commitments to scholarship and the public interest, hallmarks of Howard's entire professional career, led him to a position on the Duke University Law School faculty. He then went to Washington, D.C., as counsel (1931–1933) for the "Wickersham" Commission on Law Enforcement and Public Policy, whose major concern was compliance with the prohibition laws. During FDR's first term, Howard, a committed New Dealer, served a three-year hitch as an attorney with various institutional manifestations of the National Recovery Administration.

He answered his true calling in 1936 when he began an extended career arguing appeals for the Federal Power Commission. He appeared before the United States Supreme Court more than a dozen times. He also argued in virtually all of the United States Circuit Courts of Appeals. His cases concerned fundamental aspects of the Commission's authority over the electric power and natural gas industries. In the thirty-one years Howard argued Commission appeals, perhaps no other attorney representing the Commission or private parties had a greater impact on the course of regulation under the Federal Power and Natural Gas Acts. Howard was the Commission's first Solicitor (1957–1967), a position created so he could argue Supreme Court appeals on the Commission's behalf without participation by the U.S. Solicitor General.

Following his first "retirement," Howard continued public utility work first by forming a law partnership with Willard Gatchel, a former General Counsel to the Commission, and later by joining Bruder, Gentile & Marcoux in 1976. He worked a full schedule for two more years until his second retirement in 1978, the 43<sup>rd</sup> year of his career as an energy attorney.

Howard loved the pursuit of law, derived immense satisfaction from his written and oral advocacy, and believed passionately in the work of the Federal Power Commission. Howard's legal acumen was matched by his fortitude. He overcame poor and progressively deteriorating vision that affected him for nearly half his professional career and gradually deprived him of his eyesight. He compensated for this handicap by using magnifying glasses of increasing strength and high intensity electric lamps.

Howard's ethics were impeccable. He was a resolute litigator, but ever the gentleman and always a source of warmth, good humor, and encouragement to all his colleagues. He found time to be active in his church and was devoted to his family. He was dearly loved by his wife Elizabeth, who predeceased him in 1998, and by his daughter and son-in-law Mary Lib and Dieter Hoinkes. Those of us who had the opportunity to work with Howard are privileged—all of us in the energy bar walk in the path he cleared and are deeply in his debt.

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