

OUR FINEST HOUR - THE CIRCUS FIRE

by

Joseph P. Kenny¹

The Circus was in town again. It was 2:40 p.m., July 6, 1944. The place was Cleveland and Barbour Streets in Hartford, Connecticut. The big cats were moving through the runways to their cages. The flying Wallenda family had just swung up to their high perches for the start of their act. The laughter and applause had almost faded when the cry of “fire” soared above the music of the main entrance, and in a few moments, was rapidly consuming the top of the tent. Panic seized hundreds, and a mad rush was made for safety.

By nightfall, there were 152 deaths listed and 225 persons injured, and several more casualties were reported on subsequent days. The Ringling Brothers Barnum & Bailey Circus hovered near the abyss of total collapse. Within forty-eight hours, suits for damages had started, and the seventy-nine red and yellow cars bearing the big top were posted with lien notices. The Circus was impounded. The lawsuits continued to climb. The event was reported throughout the world as a home-front war catastrophe. In 2000, the circus fire was called the most important Connecticut news story of the 20th century.

In the face of this mounting legal melee that could only bode ill for the hundreds of claimants, the Circus, and the judicial system, Attorneys Julius B. Schatz and Arthur D. Weinstein on a warm July day, but a scant week later, decided to drive to Willimantic, to see

¹Attorney Kenny wrote this essay in the early 1990's for inclusion in a Hartford County Bar photographic directory. It has been edited by Judge Henry S. Cohn based on his book, *The Great Hartford Circus Fire* (Yale University Press 1991, with David Bollier).

Judge John Hamilton King, assigned to chamber hearings during the summer recess of the Superior Court. En route, they picked up Attorney Edward Rogin. Their object was to seek a receivership for the Circus, and Ed Rogin was to be their requested choice for receiver.

The three attorneys who motored from Hartford to Willimantic to request a receivership faced a major technical problem. They represented tort claimants and, like all non-judgment creditors, had no standing in equity to seek a receivership. This rule was steeped in the division between law and equity, based on the principle that a non-judgment creditor had not completed his remedy at law, and thus could not seek equitable relief. The courts were also loath to impose a moratorium upon the rights of secured creditors.

The three attorneys, however, made a strong case and convinced Judge King to act to remedy the chaos of multiple attachments as well as to preserve the assets of the Big Top from further wasting. Judge King, recognizing the legal issues, craftily placed the Circus in a temporary receivership with Edward Rogin as receiver. The Circus was permitted to leave Connecticut upon the posting of a cash bond of \$375,000 and an assignment up to the amount of \$125,000 in fire insurance policies of anticipated payments as a result of the fire. An appraisal of the physical property of the Circus in Connecticut came to about \$500,000. It was agreed by Circus officials that proceeds from a \$500,000 public liability policy would be used exclusively for the benefit of the claimants.

By one scratch of his pen, Judge King had placed the Circus in the hands of a receiver. All subsequent attachments were prevented. It terminated all previous attachments, and court permission was required for all actions against the receiver. None of the interested parties challenged the temporary receivership and it was made permanent in September 1944.

After a meeting of the bar in the north courtroom of the Superior Court, 95 Washington Street (the Hartford County Building), Attorney Lucius F. Robinson, as president of the Hartford County Bar Association, appointed a special circus disaster committee comprised of Attorneys Robert P. Butler, chairman, Joseph P. Cooney and Julius B. Schatz, who was also counsel for the receiver. Rogin, as receiver, the bar committee, and Cyril Coleman, Joseph F Berry, and Dan G. Judge of New York, representing the Circus, undertook to work out an arbitration agreement. The Circus had been sued by over five hundred claimants. With the state of the court docket, it might have taken ten years to process all claims. The Connecticut jury docket was almost three years behind as of the time of the fire.

Increasingly after World War II, the country's attorneys turned to arbitration to resolve mass tort incidents, such as the circus fire. Attorneys recognized that arbitration, sometimes after receivership or bankruptcy proceedings, provided an expeditious vehicle to protect the interests and rights of both the claimants and the defendant tortfeasor. Keeping with this new trend, an arbitration agreement was hammered out and signed in November 1944 through a unique and realistic cooperation between the receiver and counsel, the Circus group, the Hartford County Bar Association and the court.

Under the arbitration agreement, three arbitrators were selected by Chief Justice William H. Maltbie: State Referee, Alfred E. Baldwin was the neutral, presiding officer, the claimants named Judge Abraham S. Bordon, and the Circus named Attorney Daniel G. Champion, who was the manager of the Aetna Casualty in Hartford.

The arbitration agreement was truly without precedent in legal history. The Circus waived any defense it may have had on the question of liability. The only issues arbitrated were

the actual receipt of damages to person or property by reason of the fire, and secondly, the monetary amount of said damages. Formal rules of evidence were not adhered to. The arbitrators had the power to call in their own experts. Claims of \$200 or under were handled by the Circus, which amounted to 112 in number. Thirty-five claims were disallowed.

This left a balance of 551 injury and 169 death claims. It must be borne in mind, that at the time of this tragedy, there was a statutory ceiling of \$15,000 on death awards. All of these hearings were completed within a span of three years.

The attorneys representing claimants agreed to a maximum fee schedule which was considerably under the standard contingency terms that the bar used under ordinary circumstances. They accepted 10 percent of the claim in death cases, in the personal injury claims, 15 percent on the first \$5,000, 10 percent on the next \$15,000, and no fee in excess of \$20,000.

The claims were to be paid in periodic dividends from the income of the Circus, and from other sums due the Circus in income tax refunds and proceeds of insurance policies. The Hartford County Bar Association was authorized to audit the Circus books yearly to determine whether dividend standards were being followed. The Circus, in turn, agreed to file no voluntary petition in bankruptcy.

The Circus paid periodic dividends to the receiver after the awards were made, and these were distributed to the claimants. They came to 25 percent of the total in July 1946; 37.5 percent in January 1947; 10 percent in April 1948; 5 percent each, in January 1949 and December 1949, leaving an unpaid balance at that time of approximately \$690,000.

Throughout this entire period, numerous meetings were held by the Hartford Bar

Committee, the receiver, and the Circus leading to a final resolution. Finally, in August 1950, the Circus agreed to pay the above balance in one final installment, and the Bar Committee agreed to recommend that the payment of interest at the rate of 4 percent be waived.

A special meeting was called at the Hartford County Building for August 31, 1950. The attorneys representing the claimants and any other interested parties were invited to attend to discuss the offer of the Circus. They came, they discussed and they approved.

Six years had elapsed since the shriek of fire had resounded across the circus grounds on Barbour Street. Although the Circus had made a total payment of \$3,946,355.70, it had been allowed to live, to grow anew, and in the process to make children laugh again.

Almost all of the attorneys involved were members of the Hartford County Bar Association. Their untiring actions had proven to be a union of energy, effort and will in attaining the greatest possible good for all. This was the face that our bar association exhibited to the world in the wake of that fateful day in July, 1944.

One last word about our bar association's finest hour. The courts recognized the bar's efforts as witnessed by Judge John Cullinan's remarks in *Jacobs v. Ringling Brothers Barnum & Bailey*, 18 Conn. Sup. 134, 140 (1952) (issue of receiver's fee). He stated, "This laudable spirit of management has been matched by the dignity and exemplary conduct of the legal profession of Hartford County. What might well have been an unseemly, grasping and sordid approach to a dreadful tragedy has been, on the contrary, an exhibition of lawyers at their professional best, acting with restraint and high-mindedness and with a consuming zeal for justice to all concerned. The lawyers of Hartford County have honored their profession. It is a pleasure to pay tribute to them in this public manner."

In *Jacob v. Ringling Brothers Barnum and Bailey Combined Shows, Inc.*, 141 Conn. 86, 88 (1954), a similar statement of praise was given by Justice Baldwin in affirming Judge Cullinan: “We pause in our consideration of the instant case to commend the handling of this whole affair as one of the finest examples of effective co-operation between lawyers, litigants and the trial courts in attaining justice that has come to our notice from the legal annals of this or any other state.”

To conclude, the site of the Circus fire in 1944 was a vacant lot, also known as the “Circus Lot.” Some years later, the city of Hartford constructed the Wish Elementary School there. In 2005, a memorial was dedicated on the grounds of the Wish School to the victims of the fire, who had been assisted by the community, including the Hartford County Bar Association.